

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)No. 4:09-CR-00679 HEA
)
KATHERINE A. MOCK and)
ELAIN KAY YOUNG,)
)
Defendants.)

JURY TRIAL

VOLUME 6

BEFORE THE HONORABLE HENRY E. AUTREY
UNITED STATES DISTRICT JUDGE

MARCH 19, 2012

APPEARANCES:

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(APPEARANCES CONTINUED ON PAGE 2)

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(PROCEEDINGS STARTED AT 9:10 A.M.)

(The Following Proceedings Were Held Outside the Hearing and
Presence of the Jury.)

THE COURT: I noted from the e-mails that there were
some issues, so do you want to take those up first?

MR. CURRAN: Okay. There is one instruction that
both defendants are going to object on. I think what I'll do
is I can start the record, and I know Mr. Gorla has more
things to say, and I also think then Ms. Young's lawyers have
some instructions that they want to submit.

MR. GORLA: I do.

MR. CURRAN: But we don't have anything else to
submit.

THE COURT: Okay.

MR. CURRAN: Our concern, it's 5.01, the aiding and
abetting instruction, Judge, and it is page 34 in the
Government's packet. If you have a dirty set, it's 34.

THE COURT: Yes, okay.

MR. CURRAN: All right. We don't think this applies
in this case, Judge. Aiding and abetting, if we look at the
notes on Use that I am going to quote in a second, usually the
setup is there are principals involved in the ultimate act and
then there is another actor that may aid or abet the
principals. Well, in this case, we don't have that situation.
Both the people charged here are charged as principals, and it

1 also says aiding and abetting murder for hire, so there is no
2 other minor actor that is aiding and abetting, so you can't
3 have a situation where you are a principal and then you are
4 also aiding and abetting your own cause. I mean, you're
5 either a principal or you are not a principal. I think that
6 is it in a nutshell.

7 I am reading from the note on Use, and they cite
8 Standefer v. U.S. -- it's a U.S case -- "In order to sustain
9 the conviction of a defendant who has been charged as an aider
10 and abettor, it is necessary that there be evidence showing an
11 offense to have been committed by a principal and that the
12 principal was aided or abetted by the accused, although it is
13 not necessary that the principal be convicted or even that the
14 identity of the principal be established." And that last
15 sentence doesn't relate to this, but we are talking about two
16 principals here. You can't be a principal and be an aider and
17 abettor, so we don't think this is appropriate in this case.

18 Now I understand overall, generally when we have
19 conspiracy instructions, it's usually these multi defendant
20 drug charges or maybe frauds. It's sort of unusual to see in
21 this sort of situation, so I think some of these instructions,
22 we use them based on our experience with other types of cases,
23 but aiding and abetting is not appropriate with this because
24 both women as I said are charged as principals. Mr. Gorla I
25 know has something to add to the argument.

1 MR. GORLA: I really don't, Judge. He pretty much
2 hit it on the head, you know, that the aider and abettor
3 instruction assumes that someone commits the offense and then
4 the aider and abettor, you know, helps in the commission of
5 the offense, and in this case, under the Government's theory,
6 you have got two principals, and they are both principals, so
7 they can't aid and abet themselves.

8 THE COURT: Mr. Reilly.

9 MR. REILLY: Judge, of course, we have a different
10 opinion. Murder for hire by definition requires acting
11 together. By definition with this offense, somebody enlists
12 someone else to assist them to do a murder and in exchange
13 agrees to give them a quid pro quo or some type of
14 consideration. So by definition, this offense involves acting
15 with another. Here there is evidence they both played a role
16 in the murder. If we start from the beginning, we know they
17 are acting together. Shortly after Ms. Mock had contact with
18 Ms. Young on two occasions, once at the farm -- strike that --
19 on the telephone on March 14th, almost immediately thereafter
20 she attempted to solicit Keri Ponder to do the killing, and
21 then shortly after Ms. Mock returned from her visit with
22 Ms. Young on the 16th and/or 17th, she solicited Thomas Ponder
23 to do the killing. Thereafter, Ms. Mock purchased a ski mask
24 on her way to Novinger. The ski mask certainly was involved
25 in the killing. The evidence, the forensic evidence, would

1 support that.

2 Aside from that, there is evidence that they were
3 acting together at the barnyard when the victim was killed
4 with Ms. Young's rifle, and Ms. Mock's DNA, gunshot residue
5 were on the ski mask and gloves found together after the
6 killing. Aside from that, they both gave each other an alibi.
7 Their statements were in lockstep. There is significant
8 evidence to show that they were acting together. So Young was
9 going to pay somebody to kill her husband. Mock killed her
10 husband and/or assisted in the killing. There is evidence to
11 support that, and there is evidence to support giving the
12 instruction. Thank you.

13 THE COURT: Mr. Curran.

14 MR. CURRAN: If I can respond just briefly. All that
15 evidence is what I expected. It is what the Government used
16 to show the conspiracy between the two women, that they both
17 had this planned, they were coconspirators. That all supports
18 the conspiracy. Aiding and abetting historically or
19 traditionally goes to sort of a lesser player or lesser actor
20 that somehow helps, you know, the principals. I know I am
21 repeating myself, but all that evidence that the Government
22 just talked about, they are using to show the conspiracy
23 between the two women, that they were principals in this
24 scheme. So you can't be both. You can't be an aider and
25 abettor and a principal.

1 THE COURT: Well, articulate those facts that support
2 the concept that the Government's perspective is that they are
3 both principals within the conspiracy as opposed to aiders and
4 abettors of one or the other or each other.

5 MR. CURRAN: Well, when we are talking about -- you
6 know, the Government's theory is that these two women were
7 conspiring to commit a murder for monetary benefit. That is
8 it in a nutshell.

9 THE COURT: Okay.

10 MR. CURRAN: And the evidence they have that Ms. Mock
11 asked others to get involved in this, that was a principal --
12 that was their plan that they were trying to complete, to get
13 somebody else, you know, to do the act. So that is the
14 principals deciding -- now this is based on the Government's
15 evidence -- we want to do this murder, and we want to do the
16 murder because there is a monetary benefit and whatever
17 reasons -- you know, there is other reasons the Government I
18 think will probably argue -- and then the agreement was to
19 them -- because remember, these statements that got in over
20 Ms. Young's lawyer's objections were that Kathy Mock was
21 acting on behalf of both of them, all right? She quotes Kay
22 Young. You know, they brought that out through both the
23 Ponders that, you know, Kay Young wants this done. You know,
24 for a sum of money, will you do the act. And that was the
25 agreement between the two of them. So it was part of the

1 planning to get somebody else to do it. It's not a situation
2 where there was a lesser player.

3 You know, usually in conspiracies, sometimes you see
4 somebody that is involved for a short period of time in the
5 conspiracy. You know, aiding and abetting in this situation
6 would be some third party that solicits on behalf of the
7 principals. You know, say there is another son or something
8 that goes and talks to Thomas. He might be charged with
9 aiding and abetting because he is helping solicit. But when
10 the principals, you know, the people who hatch the plan, are
11 carrying out the plan as the Government said, that is not
12 aiding and abetting. That is hatching the plan. So I think
13 all the evidence that they have got -- you know, when we were
14 arguing at the bench about all this and these statements
15 getting in, the Government's argument was it was in
16 furtherance of the conspiracy. You know, we haven't heard the
17 word "aiding and abetting" until this instruction. You didn't
18 hear it once during the trial. I mean, all the evidence that
19 got in, all the arguments we had about what could get in or
20 not get in was based on these two were coconspirators.

21 THE COURT: Let me ask you this then. The basic
22 concept of a conspiracy is what?

23 MR. CURRAN: Well, it's two people acting together to
24 commit an act.

25 THE COURT: All right. And factually those two

1 people acting together engage in certain conduct to execute on
2 the conspiracy; right?

3 MR. CURRAN: Yes.

4 THE COURT: All right. So if you look at this
5 instruction, the aiding and abetting instruction, whether
6 there are principals or lessers or principals and lessers,
7 doesn't this aiding and abetting instruction necessarily more
8 typically than not in all instances of a conspiracy become a
9 consideration for instructing because isn't that the essence
10 of the conspiracy? You can't have a conspiracy by yourself;
11 right?

12 MR. CURRAN: We have yet to see -- I'll say we have
13 yet to see that.

14 THE COURT: Okay. Or at the least, nobody has proved
15 that there has been a conspiracy by one person. So if you
16 need at least two people mathematically speaking and
17 grammatically speaking and definitionally speaking, too, for
18 there to be a conspiracy, don't those two persons if we are
19 talking about a two-person conspiracy engage in acts, conduct,
20 that put them in a position of being an aider and abettor
21 necessarily?

22 MR. GORLA: I think, Judge, the problem with the
23 Government's argument is the aider and abettor instruction
24 doesn't apply to the conspiracy. The aider and abettor
25 instruction applies to the murder for hire. The murder for

1 hire, okay, under their theory, Ms. Young promised to pay
2 Ms. Mock money to kill her husband. That is their theory. So
3 we are not talking about the conspiracy charge because if you
4 look at the conspiracy charge, they don't cite the aider and
5 abettor statute. We are only talking about Count Two, and in
6 Count Two, both Ms. Mock and Ms. Young under their theory are
7 principals. They are both principals in the case, and it is
8 not like Mr. Curran said that there is a third party out there
9 that is kind of helping with the murder for hire. They are
10 both actively participating in the murder for hire. They are
11 the principals, and that is what the aider and abettor
12 instruction goes to, not the conspiracy. It goes to the
13 murder for hire.

14 THE COURT: I don't disagree with that, but doesn't
15 that also if you take the logical steps from the conspiracy to
16 the actual commission of the offense and then actually
17 executing on the offense, from what you have indicated, the
18 evidence suggests, does it not, that one aided and abetted the
19 other or at the very least they aided and abetted each other
20 in the commission of the murder for hire?

21 MR. GORLA: Well, I guess that's where the
22 disagreement comes in because we think if they are both
23 principals, then they are acting together. As opposed to
24 aiding and abetting each other, they are both active
25 principals committing the offense, and that is our argument.

1 THE COURT: All right.

2 MR. CURRAN: Judge, I think this is designed for, you
3 know, the individual that takes one small role in the
4 conspiracy. Like in a drug conspiracy, the individual that
5 maybe drives one load or, you know, makes one sale or
6 something like that, and that person will say, Hey -- you
7 know, you have seen it, they are going to say, All I did was I
8 just stored some stuff at my house or something. Well, then
9 that is aiding and abetting the conspiracy, and I think that
10 is a distinction that is traditionally made. You know, if I
11 can use it, it seems to me -- to use a guideline term -- it's
12 double counting. The same conduct that they are alleging is a
13 part of the conspiracy, now they are also calling aiding and
14 abetting. I don't think that's the intent of this
15 instruction.

16 MR. REILLY: Judge, the evidence supports it, and
17 just because you can charge a myriad of people who assist in a
18 myriad of different ways -- for instance, Tonya Hyles in the
19 Hyles and Cannon murder for providing the gun or giving
20 Amesheo Cannon a place to stay or whatever it may be, you can
21 charge a number of people with aiding and abetting under a
22 myriad of different circumstances. That doesn't mean you
23 can't charge Amesheo Cannon with aiding and abetting by doing
24 the shooting in the murder for hire. And similarly here, the
25 evidence fits. There is evidence to support it. Aiding and

12
1 abetting conspiracy and aiding and abetting are not mutually
2 exclusive, and they are charged -- the statute allows a charge
3 for conspiracy and the substantive count of which they are
4 charged, murder for hire, and they are acting together, aiding
5 and abetting each other. There is evidence to support that.

6 THE COURT: Anything else?

7 MR. GORLA: No, Your Honor.

8 MR. CURRAN: No, Judge.

9 THE COURT: The defendant's collective objection to
10 the tender of 5.01 as modified from the Eighth Circuit Model
11 Criminal Jury Instructions is overruled on the arguments and
12 discussions previously noted on the record.

13 MR. CURRAN: Judge, that's all I have. I think Mr.
14 Gorla has something.

15 THE COURT: Yes, sir.

16 MR. GORLA: Judge, I just want to offer a few
17 instructions, and I don't believe that Mr. Reilly has any
18 objection to it. I want to offer an instruction based on
19 2.18.

20 THE COURT: Do you have a dirty copy of this, too,
21 Mr. Gorla?

22 MR. GORLA: Yes, I do, Judge.

23 THE COURT: Oh, okay, prior convictions --

24 MR. GORLA: Yes, Judge.

25 THE COURT: -- of a witness as it references Keri and

1 Thomas Ponder and Amanda Bax. Do you have any objection to
2 that, Mr. Reilly?

3 MR. REILLY: I have no objection to that, Judge. The
4 Government has no objection. No objection to Defendant's 4.02
5 either, Judge.

6 THE COURT: No objection to that, okay. Any other
7 submissions?

8 MR. GORLA: I do, Judge, and I understand that the
9 Court has previously -- we objected to the testimony of Thomas
10 Ponder as to what Kathy Mock told him, and we also objected to
11 the testimony of Keri Ponder as to what Kathy Mock told her,
12 and I understand, you know, that the Court overruled our
13 objection, but just to make my record, I would just like to
14 submit these limiting instructions.

15 THE COURT: 2.14 as to each of those; is that
16 correct?

17 MR. GORLA: I'm sorry?

18 THE COURT: You are submitting 2.14 as to each of
19 those witnesses?

20 MR. GORLA: I am, Your Honor.

21 THE COURT: Mr. Reilly.

22 MR. REILLY: Judge, I think it's inconsistent with
23 the law on coconspirator statements. The Government's
24 instruction, the instruction related to coconspirator
25 statements on the marked set that you have -- it's instruction

1 5.06I, it's page 32 of our proposed instructions -- "You may
2 consider acts knowingly done and statements knowingly made by
3 a defendant's coconspirators during the existence of the
4 conspiracy and in furtherance of it as evidence pertaining to
5 each defendant even though they were done or made in the
6 absence and without the knowledge of each defendant." Judge,
7 these statements that came in were the Defendant Mock's
8 efforts to solicit killers on behalf of Defendant Young.
9 These are statements made in furtherance of the conspiracy.
10 That is why the Court admitted that evidence at trial. It's
11 highly probative, and that is what the law says. Section
12 5.06I is the jury's instruction. What Mr. Gorla has tendered
13 is inconsistent with the Court's ruling. It's also
14 inconsistent with the law on coconspirator statements.

15 THE COURT: Mr. Gorla, what say you in response?

16 MR. GORLA: Judge, I understand that these
17 instructions are what we -- we asked for a limiting
18 instruction prior to Keri Ponder and Thomas Ponder's
19 testimony, and the Court refused to give us a limiting
20 instruction. I am just trying to preserve the record and
21 again ask that the Court give this instruction again based
22 upon our theory that there was no evidence of an agreement or
23 conspiracy shown and that these statements then are hearsay
24 statements that should not come in and, therefore, they
25 shouldn't be admissible against Ms. Young.

1 THE COURT: Okay. Defendant's tender of 2.14
2 submitted by Defendant Young --

3 MR. REA: Can we mark one A, Judge, and one B?

4 THE COURT: Uh-huh. Will be denied and refused. The
5 first, Instruction A, will be with regard to the testimony
6 regarding Katherine Mock's attempt to solicit Keri Ponder to
7 kill Melvin Griesbauer. Instruction B will be the tender by
8 defendant of the instruction regarding the testimony relating
9 to Katherine Mock's inquiry as to whether Thomas Ponder knew
10 someone who would kill Melvin Griesbauer. Both of those
11 instructions again will be noted as offered but refused.

12 All right. Any other tenders or offers, Mr. Gorla?

13 MR. GORLA: Judge, I think, and I talked to Mr.
14 Reilly about this, it's not so much an objection to any of the
15 instructions but as to the order of the instructions.

16 THE COURT: Yes.

17 MR. GORLA: Instruction 3.08 -- I think, Judge, that
18 is page 11.

19 THE COURT: Uh-huh.

20 MR. GORLA: I believe, Judge, that that instruction
21 should go before -- it should be followed by I believe
22 instruction 12 on page 12 and then the instruction on page 10.
23 So I think that order should go that 11 should be 10 and 12
24 should be 11 and 10 should be 12. It just makes more sense
25 that way, at least to me.

16
1 THE COURT: All right. So you are saying that 3.08
2 should be first?
3 MR. GORLA: Correct. And then the 404(b)
4 instruction, which is 2.08.
5 THE COURT: Okay.
6 MR. GORLA: And then 2.14, which is page 10.
7 THE COURT: Oh, "As you know, there are two
8 defendants on trial here"?
9 MR. GORLA: Yes, Judge.
10 THE COURT: Okay. Do you have any problem with that?
11 MR. REILLY: Not at all, Judge.
12 THE COURT: And then the burden of proof instruction
13 following that one?
14 MR. GORLA: Correct, Judge.
15 THE COURT: All right. Anything else regarding the
16 order?
17 MR. REILLY: Nothing else regarding the order from
18 the Government.
19 MR. GORLA: As to where to put the instructions,
20 Judge, that I submitted, I believe after the credibility of
21 witnesses, Judge, wherever that one is.
22 MR. REILLY: It's page 6. So we would put those
23 after page 6. Is that what you are proposing?
24 MR. GORLA: That would be fine, Judge.
25 THE COURT: All right. So you would request that

1 those come before the 2.07 instructions --

2 MR. REILLY: Judge, I guess from the Government's
3 perspective --

4 THE COURT: -- regarding Kathy Mock's statements made
5 to law enforcement? Because I was going to put them after
6 that.

7 MR. REILLY: We would rather have them after that as
8 well, Judge.

9 MR. GORLA: After that would be fine, Judge.

10 THE COURT: Okay. So I was going to put --

11 MR. GORLA: Right before the 4.10 instructions.

12 THE COURT: Correct.

13 MR. GORLA: That would make sense.

14 THE COURT: Which would be the expert testimony.

15 MR. GORLA: Correct.

16 THE COURT: All right. Anything else?

17 MR. GORLA: No, Your Honor.

18 MR. REILLY: Judge, the only other thing I had as a
19 bookkeeping matter, we sent you an instruction earlier this
20 morning. The statutory definition under which Count Two is
21 based in part on is Section 2, and it's a short statutory
22 definition from aiding and abetting.

23 THE COURT: Right, regarding Count Two.

24 MR. REILLY: We said it was regarding Count One, and
25 there was a typo. It should be Count Two. I have a clean and

1 dirty copy if the Court needs that.

2 THE COURT: All right. So the submission that
3 indicates regarding Count One you are withdrawing and
4 substituting regarding Count Two.

5 MR. REILLY: Only with regard to the acting Section 2
6 definition.

7 THE COURT: Okay.

8 MR. REILLY: There was another definition that said
9 "Counts One and Two are based on 1958."

10 THE COURT: Right, exactly.

11 MR. REILLY: That is correct.

12 THE COURT: I think the one that followed that began
13 with reference to Count One --

14 MR. REILLY: And that should reference Count Two.

15 THE COURT: -- and should reference Count Two.

16 MR. REILLY: Yes, Judge.

17 THE COURT: Okay. All right. Well, why don't you
18 give me that again. I know I got it, and I think I put it in
19 the packet, but just to be sure. All right. Anything else?

20 MR. GORLA: No, Your Honor.

21 THE COURT: So here's what we've got. Number 8 will
22 be 3.01. Nine will be 3.02. Ten will be 3.03. Eleven will
23 be 2.03. Twelve will be 4.17. Thirteen will be 3.04.
24 Fourteen will be 2.07 as to Katherine Mock's statements.
25 Fifteen will be 2.07 as to Elain Young's statements. Sixteen

1 will be 2.18 regarding the convictions of witnesses and
2 credibility. Seventeen will be the reputation of Normane
3 Newlin, 4.02. Eighteen will be 4.10, experts. 19 will be
4 3.08, "Under Count One, the indictment charges that each
5 defendant committed the crime of conspiracy." Twenty will be
6 2.08, "You have heard evidence that the defendant, Kay Young,
7 previously offered another person United States currency."
8 Twenty-one will be 2.14, "As you know, there are two
9 defendants on trial here. Each defendant is entitled to have
10 her case decided solely on the evidence." Twenty-two, burden
11 of proof, 3.11. Twenty-three, "Counts One and Two of the
12 indictment are based upon a statute." Twenty-four is "Count
13 Two of the indictment is based upon a statute which is federal
14 law" submitted by the Government. Twenty-five is the
15 indictment, Title XVIII, 1958.

16 Twenty-six is O'Malley and Grenig, Section 13.05,
17 "The indictment charges that the offenses were committed in
18 and around." Twenty-seven is 3.09, conspiracy to commit
19 murder for hire. Twenty-eight is 5.06B. Twenty-nine is
20 5.06C. Thirty is 5.06D. Thirty-one is 5.06E. Thirty-two is
21 5.06I. Thirty-three is 3.09, murder for hire. Thirty-four is
22 aiding and abetting. Thirty-five is Missouri Revised Statute
23 565.020. Thirty-six, anything of pecuniary value.
24 Thirty-seven, facility of interstate commerce. Thirty-eight,
25 as consideration for. Thirty-nine, 7.05, intent or knowledge.

1 Forty, Devitt and Blackmar, Section 17.18. Forty-one,
2 deliberation mechanics. And then finally the verdict forms.
3 And you all have seen that; right?

4 MR. GORLA: We have, Judge.

5 THE COURT: Anybody have any objections to the forms
6 of verdict?

7 MR. GORLA: No, Your Honor.

8 THE COURT: Any objections to the instructions that
9 the Court intends to read and give to the jury either as to
10 their substance or order?

11 MR. GORLA: Not as to the order, Judge, but just to
12 renew our previous objection to the aider and abettor
13 instruction.

14 THE COURT: All right.

15 MR. CURRAN: We have the same objection. Your Honor,
16 can I ask two questions. Do you let the instructions go back?

17 THE COURT: Yes.

18 MR. CURRAN: And then when do you read them? Do you
19 read them before or after?

20 THE COURT: Like I've been reading them since 1986,
21 before you guys start talking.

22 MR. CURRAN: Okay.

23 THE COURT: Argument, how much time?

24 MR. DITTMEIER: Judge, we have talked. I would like
25 an hour, and I believe we're in agreement on that and they are

1 going to split it.

2 THE COURT: How do you want it split, Mr. Dittmeier?

3 MR. DITTMEIER: I would like a warning at 40 minutes.

4 THE COURT: Okay, so 40 and 20. What kind of
5 warning, two-minute, five-minute?

6 MR. DITTMEIER: Just tell me when it is 40 minutes.

7 THE COURT: So at 40 minutes?

8 MR. DITTMEIER: Yes, sir.

9 THE COURT: Mr. Gorla, Ms. Herndon --

10 MS. HERNDON: Yes, Judge.

11 THE COURT: -- Mr. Curran, and Mr. McGraugh, how do
12 you want your time divided? How are we doing this?

13 MR. GORLA: She will take it all.

14 MR. MCGRAUGH: Could I get a five-minute warning,
15 Judge?

16 MS. HERNDON: That is good for me, too, Judge.
17 Thanks.

18 THE COURT: So are you dividing it in half, 30
19 minutes and 30 minutes, or are you each going to take an hour?

20 MR. MCGRAUGH: I think we are dividing it, Judge.

21 MS. HERNDON: I don't need an hour. Thank you.

22 THE COURT: Just checking. Five-minute warning for
23 you, five-minute warning for you, warning at 40 for you, right
24 of encroachment. All right. Motions in limine or protective
25 orders for closing argument, anybody? Nobody. Good enough.

1 All right. Now I need a few minutes to reorganize and double
2 check the clean copies, the versions that are actually going
3 to be read, and once I do that, we will be ready to go. So if
4 you all need to take care of personal matters, feel free.

5 **(Court Recessed from 9:47 a.m. until 10:15 a.m.)**

6 **(The Following Proceedings Were Held Within the Hearing and**
7 **Presence of the Jury.)**

8 THE COURT: Good morning, ladies and gentlemen. Good
9 morning, Counsel. Are we ready to proceed?

10 MR. DITTMEIER: The Government's ready, Judge.

11 MR. MCGRAUGH: Defendant Mock is ready, Your Honor.

12 MS. HERNDON: Yes, Your Honor.

13 THE COURT: Ladies and gentlemen, please listen
14 carefully. Instruction number 8, Members of the jury, the
15 instructions I gave you at the beginning of the trial and
16 during the trial remain in effect. I now give you some
17 additional instructions. You must, of course, continue to
18 follow the instructions I gave you earlier as well as those I
19 give you now. You must not single out some instructions and
20 ignore others because all are important. This is true even
21 though some of those I gave you at the beginning of and during
22 the trial are not repeated here. The instructions I am about
23 to give you now as well as those I gave you earlier are in
24 writing and will be available to you in the jury room. I
25 emphasize, however, that this does not mean that they are more

1 important than my earlier instructions. Again, all
2 instructions, whenever given and whether in writing or not,
3 must be followed.

4 Instruction number 9, It is your duty to find from
5 the evidence what the facts are. You will then apply the law
6 as I give it to you to those facts. You must follow my
7 instructions on the law even if you thought the law was
8 different or should be different. Do not allow sympathy or
9 prejudice to influence you. The law demands of you a just
10 verdict unaffected by anything except the evidence, your
11 common sense, and the law as I give it to you.

12 Instruction number 10, I have mentioned the word
13 "evidence". The evidence in this case consist of the
14 testimony of witnesses, the documents and other things
15 received as exhibits, and the facts that have been stipulated,
16 that is, formally agreed to by the parties. You may use
17 reason and common sense to draw deductions or conclusions from
18 facts which have been established by the evidence in the case.
19 Certain things are not evidence. I will list those things for
20 you now. One, statements, arguments, questions, and comments
21 by lawyers representing the parties in the case are not
22 evidence. Two, objections are not evidence. Lawyers have a
23 right to object when they believe something is improper. You
24 should not be influenced by the objection. If I sustained an
25 objection to a question, you must ignore the question and must

1 not try to guess what the answer might have been. Three,
2 testimony that I struck from the record or told you to
3 disregard is not evidence and must not be considered. Four,
4 anything you saw or heard about this case outside the
5 courtroom is not evidence. Finally, if you were instructed
6 that some evidence was received for a limited purpose only,
7 you must follow that instruction.

8 Instruction number 11, The Government and the
9 defendants have stipulated, that is, they have agreed, that
10 certain facts are as counsel have stated. You must,
11 therefore, treat those facts as having been proved.

12 Instruction number 12, Some of you have heard the
13 terms "direct evidence" and "circumstantial evidence". You
14 are instructed that you should not be concerned with those
15 terms. The law makes no distinction between direct and
16 circumstantial evidence. You should give all evidence the
17 weight and value you believe it is entitled to receive.

18 Instruction number 13, In deciding what the facts
19 are, you have to decide what testimony you believe and what
20 testimony you do not believe. You may believe all of what a
21 witness said or only part of it or none of it. In deciding
22 what testimony to believe, consider the witness's
23 intelligence, the opportunity the witness had to have seen or
24 heard the things testified about, the witness's memory, any
25 motives that witness may have for testifying a certain way,

1 the manner of the witness while testifying, whether that
2 witness said something different at an earlier time, the
3 general reasonableness of the testimony, and the extent to
4 which the testimony is consistent with any evidence that you
5 believe. In deciding whether or not to believe a witness,
6 keep in mind that people sometimes hear or see things
7 differently and sometimes forget things. You need to
8 consider, therefore, whether a contradiction is an innocent
9 misrecollection or lapse of memory or an intentional
10 falsehood, and that may depend on whether it has to do with an
11 important fact or only a small detail.

12 Instruction number 14, You have heard testimony that
13 the defendant, Katherine A. Mock, made statements to law
14 enforcement. It is for you to decide first whether the
15 defendant made the statements, and second, if so, how much
16 weight you should give to them. In making these two
17 decisions, you should consider all the evidence including the
18 circumstances under which the statements may have been made.

19 Instruction number 15, You have heard testimony that
20 the defendant, Elaine Kay Young, made statements to law
21 enforcement. It is for you to decide first whether the
22 defendant made those statements, and second, if so, how much
23 weight you should give to them. In making these two
24 decisions, you should consider all of the evidence including
25 the circumstances under which the statements may have been

1 made.

2 Instruction number 16, You have heard that Keri
3 Ponder, Thomas Ponder, and Amanda Bax were convicted of
4 crimes. You may use that evidence only to help you decide
5 whether to believe those witnesses and how much weight to give
6 their testimony.

7 Instruction number 17, You have heard testimony about
8 the reputation of Normane L. Newlin for untruthfulness. You
9 may consider this evidence only in deciding whether to believe
10 the testimony of Normane L. Newlin and how much weight to give
11 it.

12 Instruction number 18, You have heard testimony from
13 persons described as experts. Persons who by knowledge,
14 skill, training, education, or experience have become expert
15 in some field may state their opinions on matters in that
16 field and may also state the reasons for their opinion.
17 Expert testimony should be considered just like any other
18 testimony. You may accept or reject it and give it as much
19 weight as you think it deserves, considering the witness's
20 education and experience, the soundness of the reasons given
21 for the opinion, the acceptability of the methods used, and
22 all the other evidence in the case.

23 Instruction number 19, Under Count One, the
24 indictment charges that each defendant committed the crime of
25 conspiracy to commit murder for hire. Under Count Two, the

1 indictment charges that each defendant committed the crime of
2 murder for hire. Each defendant has pleaded not guilty to
3 each crime with which she is charged. As I told you at the
4 beginning of the trial, an indictment is simply an accusation.
5 It is not evidence of anything. To the contrary, each
6 defendant is presumed to be innocent. Thus, each defendant
7 even though charged begins the trial with no evidence against
8 her. The presumption of innocence alone is sufficient to find
9 each defendant not guilty and can be overcome only if the
10 Government proves beyond a reasonable doubt each element of
11 the crime charged. Keep in mind that you must give separate
12 consideration to the evidence about each individual defendant.
13 Each defendant is entitled to be treated separately, and you
14 must return a separate verdict for each defendant. Also, keep
15 in mind that you must consider separately each crime charged
16 against each individual defendant and must return a separate
17 verdict for each of those crimes charged. There is no burden
18 upon a defendant to prove that she is innocent. Accordingly,
19 the fact that a defendant did not testify must not be
20 considered by you in any way or even discussed in arriving at
21 your verdict.

22 Instruction number 20, You have heard evidence that
23 the defendant, Elaine Kay Young, previously offered another
24 person United States currency and other things of value as
25 consideration for the agreement to murder one of her previous

1 husbands, David Crawford. You may consider this evidence only
2 if you unanimously find it is more likely true than not true.
3 This is a lower standard than proof beyond a reasonable doubt.
4 If you find that this evidence is more likely true than not
5 true, you may consider it to help you decide motive, intent,
6 knowledge, or plan. You should give it the weight and value
7 you believe it is entitled to receive. If you find that it is
8 not more likely true than not true, then you shall disregard
9 it. Remember, even if you find that the defendant may have
10 committed a similar act in the past, this is not evidence that
11 she committed such an act in this case. You may not convict a
12 person simply because you believe she may have committed
13 similar acts in the past. The defendant is on trial only for
14 the crimes charged, and you may consider the evidence of prior
15 acts only on the issue of motive, intent, knowledge, or plan.

16 Instruction number 21, As you know, there are two
17 defendants on trial here, Katherine A. Mock and Elain Kay
18 Young. Each defendant is entitled to have her case decided
19 solely on the evidence which applies to her. Some of the
20 evidence in this case is limited under the rules of evidence
21 to one of the defendants and cannot be considered against the
22 other. You have heard evidence in relation to Elain Kay
23 Young's previous offer of United States currency or other
24 things of value for the agreement to murder David Crawford.
25 You must not consider that evidence when you are deciding if

1 the Government has proved beyond a reasonable doubt its case
2 against Defendant Katherine A. Mock.

3 Instruction number 22, A reasonable doubt is a doubt
4 based upon reason and common sense and not the mere
5 possibility of innocence. A reasonable doubt is the kind of
6 doubt that would make a reasonable person hesitate to act.
7 Proof beyond a reasonable doubt, therefore, must be proof of
8 such a convincing character that a reasonable person would not
9 hesitate to rely and act upon it. However, proof beyond a
10 reasonable doubt does not mean proof beyond all possible
11 doubt.

12 Instruction number 23, Counts One and Two of the
13 indictment are based upon a statute which is federal law.
14 That statute, Title XVIII, United States Code, Section
15 1958(a), reads in pertinent part as follows: Whoever travels
16 in or causes another to travel in interstate commerce or uses
17 or causes another to use any facility of interstate commerce
18 with intent that a murder be committed in violation of the
19 laws of any state or the United States as consideration for
20 the receipt of or as consideration for a promise or agreement
21 to pay anything of pecuniary value or who conspires to do so
22 if death results shall be punished by law.

23 Instruction number 24, Count Two of the indictment is
24 based upon a statute which is federal law. That statute,
25 Title XVIII, United States Code, Section 2, reads in pertinent

1 part as follows: Whoever commits an offense against the
2 United States or aids, abets, counsels, commands, induces, or
3 procures its commission is punishable as a principal.

4 Instruction number 25, Omitting the formal caption
5 and signature blocks, the indictment in this case reads in
6 pertinent part as follows: Superseding Indictment, Count One,
7 the Grand Jury charges that, Introduction, One, At all times
8 pertinent to this indictment, A, Elain Kay Young was a
9 resident of Adair County, Missouri residing in Novinger,
10 Missouri; B, Katherine A. Mock was a resident of Barry County,
11 Missouri residing in Cassville, Missouri; C, Melvin B.
12 Griesbauer, now deceased, was a resident of Adair County,
13 Missouri residing at 17631 Penny Royal Road, Novinger,
14 Missouri, 63559.

15 The Conspiracy, Two, Beginning at a time unknown but
16 including 2006, the exact beginning date being unknown to the
17 Grand Jury, up to and through 2009 and the time of this
18 indictment in the Eastern District of Missouri and elsewhere,
19 Katherine A. Mock and Elain K. Young, the defendants herein,
20 together with other persons both known and unknown to the
21 Grand Jury did unlawfully, knowingly, and intentionally
22 combine, conspire, and agree to commit an offense against the
23 United States of America, that is, the crime of murder for
24 hire, in violation of Title XVIII, United States Code,
25 Section 1958 by using and causing another to use United States

1 mails and other facilities of interstate commerce with the
2 intent that the murder of Melvin B. Griesbauer be committed in
3 violation of the laws of the State of Missouri as
4 consideration for the receipt of and as consideration for a
5 promise and agreement to pay things of pecuniary value, namely
6 money along with other benefits. Said conspiracy offense
7 resulted in the death of Melvin B. Griesbauer on March 23,
8 2006.

9 Object and Purpose, Three, The objects and purposes
10 of the conspiracy were the murder of Elain Kay Young's
11 husband, Melvin B. Griesbauer, and the obtaining of money and
12 property as a result of and in exchange for the commission of
13 Melvin B. Griesbauer's murder.

14 Four, more specifically, Elain Kay Young sought to
15 have her husband Melvin B. Griesbauer murdered, and further,
16 she sought money and property.

17 Five, Elain Kay Young knew that her husband, Melvin
18 B. Griesbauer, had a basic life insurance policy issued by the
19 Army and Air Force Mutual Aid Association, AAFMA, through
20 Melvin B. Griesbauer's service in the United States Army
21 National Guard. Melvin B. Griesbauer named his wife, Elain
22 Kay Young, as the beneficiary to that policy. Elain Kay Young
23 knew that the basic life insurance policy would among other
24 things pay to the beneficiary a sum of at least \$600,000 upon
25 Melvin B. Griesbauer's death.

1 Six, between on or about August 24, 2005 and
2 September 1, 2005, Elain Kay Young enrolled her husband,
3 Melvin B. Griesbauer, in an accidental death and dismemberment
4 insurance policy that would among other things pay to Elain
5 Kay Young as the beneficiary the sum of \$37,500 upon the
6 accidental death of Melvin B. Griesbauer. Elain Kay Young
7 obtained that accidental death and dismemberment insurance
8 policy through Monumental Life Insurance Company, Monumental
9 Life, in connection with her employment at the Milan schools
10 and her association with the Missouri State Teachers
11 Association, later known as the Association for Educational
12 Support and Development. Elain Kay Young knew that upon the
13 death of her husband, Melvin B. Griesbauer, the insurance
14 policy would among other things pay to the beneficiary the sum
15 of at least \$37,500.

16 Seven, Elain Kay Young and her husband, Melvin B.
17 Griesbauer, enrolled in an accidental death and dismemberment
18 insurance policy that would among other things pay to Elain
19 Kay Young as the beneficiary the sum of at least \$10,000 --
20 strike that -- the sum of at least \$100,000 upon the
21 accidental death of Melvin B. Griesbauer. Elain Kay Young and
22 Melvin B. Griesbauer enrolled in that accidental death and
23 dismemberment insurance policy through Continental Casualty
24 Company, a subsidiary of CNA. Elain Kay Young knew that upon
25 the death of her husband, Melvin B. Griesbauer, the insurance

1 policy would among other things pay to the beneficiary the sum
2 of at least \$100,000.

3 Eight, Elain Kay Young recruited Katherine A. Mock to
4 help facilitate the murder of Melvin B. Griesbauer. Further,
5 Elain Kay Young agreed to pay Katherine A. Mock and others
6 sums of money and other benefits for facilitating the death of
7 Melvin B. Griesbauer. As a result of said conspiracy, Melvin
8 B. Griesbauer was, in fact, murdered, thereby eliminating
9 Melvin B. Griesbauer as Elain Kay Young's husband and allowing
10 for the prospect of obtaining money, property, and other
11 benefits by Elain Kay Young and Katherine A. Mock.

12 Means and Methods, Ten, The means and methods by
13 which the conspiracy was sought to be accomplished included
14 among other things the following: A, it was part of the
15 conspiracy that in or about 2006, Elain Kay Young solicited
16 Katherine A. Mock to pursue a scheme to murder Elain Kay
17 Young's husband, Melvin B. Griesbauer; B, it was further part
18 of the conspiracy that in or about 2006, Katherine A. Mock and
19 Elain Kay Young agreed to pursue a scheme to murder Elain Kay
20 Young's husband, Melvin B. Griesbauer; C, it was further part
21 of the conspiracy that in or about March 2006, Katherine A.
22 Mock attempted to recruit K.P. to murder Melvin B. Griesbauer
23 for \$6,000; D, it was further part of the conspiracy that in
24 or about March 2006, Katherine A. Mock attempted to recruit
25 T.P. to murder Melvin B. Griesbauer for \$10,000; E, it was

1 further part of the conspiracy that on or about March 22,
2 2006, Katherine A. Mock began to travel from her residence in
3 Cassville within Barry County, Missouri to the residence of
4 Melvin B. Griesbauer and Elain Kay Young in Novinger within
5 Adair County, Missouri.

6 F, it was further part of the conspiracy that on
7 March 22, 2006, Katherine A. Mock attempted to conceal her
8 involvement in the conspiracy by concealing from some of her
9 family members her actual destination, the residence of Melvin
10 B. Griesbauer and Elain Kay Young; G, it was further part of
11 the conspiracy that on or about March 22, 2006, Katherine A.
12 Mock purchased a three hole ski mask from Wal-Mart in
13 Republic, Missouri and thereafter utilized a three hole ski
14 mask in the course of the conspiracy; H, it was further part
15 of the conspiracy that on March 22, 2006, Katherine A. Mock
16 arrived at the residence of Melvin B. Griesbauer and Elain Kay
17 Young in Novinger, Missouri and contacted Elain Kay Young; I,
18 it was further part of the conspiracy that during the late
19 evening hours of March 22, 2006 or the early morning hours of
20 March 23, 2006, Elain Kay Young departed her residence to
21 travel to the vicinity of Kirksville, Missouri to meet Melvin
22 B. Griesbauer and drive him to their residence following the
23 conclusion of his work shift.

24 J, it was further part of the conspiracy that during
25 the late evening hours of March 22nd and the early morning

1 hours of March 23, 2006, Katherine A. Mock remained at the
2 residence of Melvin B. Griesbauer and Elain K. Young in
3 Novinger, Missouri; K, it was further part of the conspiracy
4 that during the early morning hours of March 23, 2006, Elain
5 K. Young returned Melvin B. Griesbauer to their residence from
6 the vicinity of Kirksville, Missouri; L, it was further part
7 of the conspiracy that during the early morning hours of
8 March 23, 2006 near the vicinity of the barn at said
9 residence, Katherine A. Mock and Elain Kay Young caused the
10 death of Melvin B. Griesbauer by causing him to be shot in the
11 head with a .30-30 Winchester caliber rifle, a firearm
12 previously in the possession of Elain Kay Young and her
13 family; M, it was further part of the conspiracy that
14 Katherine A. Mock and Elain Kay Young attempted to conceal
15 their involvement in the conspiracy; N, it was further part of
16 the conspiracy that Katherine A. Mock and Elain Kay Young
17 attempted to conceal their involvement in the conspiracy by
18 making false statements to other persons; O, it was further
19 part of the conspiracy that Elain Kay Young attempted to
20 conceal her own involvement and the involvement of Katherine
21 A. Mock in the conspiracy by providing Katherine A. Mock with
22 pills containing hydrocodone and acetaminophen and directing
23 Katherine A. Mock to consume the pills in order to receive a
24 short term in a mental hospital and avoid a penitentiary
25 sentence.

1 P, it was further part of the conspiracy that between
2 on or about March 23rd and March 24, 2006, Katherine A. Mock
3 attempted to conceal her involvement in the conspiracy by
4 receiving pills containing hydrocodone and acetaminophen from
5 Elain Kay Young, consuming a quantity of said pills and
6 thereafter seeking medical treatment; Q, it was further part
7 of the conspiracy that Elain Kay Young used or caused another
8 to use the mail and used or caused another to use any facility
9 of interstate commerce as part of processing the insurance
10 policies including but not limited to claims for proceeds
11 payable upon the death of Melvin B. Griesbauer; R, it was
12 further part of the conspiracy that on or about March 29,
13 2006, Elain Kay Young utilized facilities of interstate
14 commerce to initiate the claims processing through the AAFMA,
15 thereby causing the AAFMA on or about April 6, 2006 to use the
16 mail to deliver a claim form and other documents to Elain Kay
17 Young in relation to AAFMA policy number 132054; S, it was
18 further part of the conspiracy that on or about August 2,
19 2007, Elain Kay Young took steps to initiate the claims
20 process on the accidental death and dismemberment insurance
21 policy that was later determined to be issued by Monumental
22 Life under policy number MZ24028 and thereafter used or caused
23 another to use the mail in relation to the claims process.

24 T, it was further part of the conspiracy that from on
25 or about August 2007 and up to and including on or about

1 February 12, 2008, Elain Kay Young mailed or caused to be
2 mailed documents including but not limited to a Proof of Death
3 Form and a Lost Policy Affidavit to Forrest T. Jones and
4 Company, Incorporated, Forrest T. Jones, Fidelity Security
5 Life Insurance Company, FSL, and other entities in an attempt
6 to process the claim for the policy that was later determined
7 to be issued by Monumental Life under policy number MZ24028;
8 U, it was further part of the conspiracy that on or about
9 March 3, 2008, Elain Kay Young mailed or caused to be mailed a
10 claim form to the Benefits Payment Department affiliated with
11 Forrest T. Jones and Monumental Life through which Elain Kay
12 Young sought among other things the payment of benefits
13 associated with the accidental death and dismemberment policy
14 that named her as the beneficiary upon the death of Melvin B.
15 Griesbauer. In violation of Title XVIII, United States Code,
16 Section 1958.

17 Count Two, The Grand Jury further charges that
18 beginning at a time unknown but including 2006, the exact
19 beginning date being unknown to the Grand Jury, up to and
20 through 2009 and the time of this indictment in the Eastern
21 District of Missouri and elsewhere, Katherine A. Mock and
22 Elain Kay Young, the defendants herein, used and caused
23 another to use the mail and other facilities of interstate
24 commerce with the intent that the murder of Melvin B.
25 Griesbauer be committed in violation of the laws of the State

1 of Missouri as consideration for the receipt of and as
2 consideration for a promise and agreement to pay things of
3 pecuniary value, that is, money and other items of pecuniary
4 value. Said offense resulted in the death of Melvin B.
5 Griesbauer. In violation of Title XVIII, United States Code,
6 Sections 1958 and 2.

7 Instruction number 26, The indictment charges that
8 the offenses were committed "in and around" or "on or about" a
9 certain date. Although it is necessary for the Government to
10 prove beyond a reasonable doubt that the offense was committed
11 on a date reasonably near the dates alleged in the indictment,
12 it is not necessary for the Government to prove that the
13 offense was committed precisely on the date charged.

14 Instruction number 27, The crime of conspiracy to
15 commit murder for hire as charged in Count One of the
16 indictment has four elements which are, One, two or more
17 persons reached an agreement or came to an understanding to
18 use interstate commerce facilities with the intent that a
19 murder for hire be committed and death resulted; and Two, the
20 defendant voluntarily and intentionally joined in the
21 agreement or understanding either at the time it was reached
22 or at some later time while it was still in effect; and Three,
23 at the time the defendant joined in the agreement or
24 understanding, she knew the purpose of the agreement or
25 understanding; and Four, while the agreement or understanding

1 was in effect, the defendant or one or more other persons who
2 had joined in the agreement knowingly used or caused another
3 to use a facility of interstate commerce, to wit, phone calls,
4 an electronic banking facility, and the United States mail for
5 the purpose of carrying out or carrying forward the agreement
6 or understanding. If all of these elements have been proved
7 beyond a reasonable doubt as to each defendant, then you must
8 find each defendant guilty of the crime charged. Otherwise,
9 you must find each defendant not guilty of this crime.

10 Instruction number 28, Under the statute upon which
11 Count One of the indictment is based, the Government must
12 prove that each defendant reached an agreement or
13 understanding with at least one other person. It makes no
14 difference whether that person is a defendant or named in the
15 indictment. The agreement or understanding need not be an
16 expressed or formal agreement or be in writing or cover all
17 the details of how it is to be carried out, nor is it
18 necessary that the members have directly stated between
19 themselves the details or purpose of the scheme. You should
20 understand that merely being present at the scene of an event
21 or merely acting in the same way as others or merely
22 associating with others does not prove that a person has
23 joined in an agreement or understanding. A person who has no
24 knowledge of a conspiracy but who happens to act in a way
25 which advances some purpose of one does not thereby become a

1 member. But a person may join in an agreement or
2 understanding as required by this element without knowing all
3 the details of the agreement or understanding and without
4 knowing who all the other members are.

5 Further, it is not necessary that a person agree to
6 play any particular part in carrying out the agreement or
7 understanding. A person may become a member of a conspiracy
8 even if that person agrees to play only a minor part in the
9 conspiracy as long as that person has an understanding of the
10 unlawful nature of the plan and voluntarily and intentionally
11 joins in it. You must decide after considering all the
12 evidence whether the conspiracy alleged in Count One of the
13 indictment existed. If you find that the alleged conspiracy
14 did exist, you must also decide whether each defendant
15 voluntarily and intentionally joined in the conspiracy either
16 at the time it was first formed or at some later time while it
17 was still in effect. In making that decision, you must
18 consider only evidence of each defendant's own actions and
19 statements. You may not consider actions and pretrial
20 statements of others except to the extent that pretrial
21 statements of others describes something that had been said or
22 done by each defendant.

23 Instruction 29, To assist you in determining whether
24 there was an agreement or understanding to commit murder for
25 hire as charged in Count One, you are advised that the

41
1 elements of the offense of murder for hire are: One, that a
2 person at or about the time charged in the indictment used or
3 caused another to use any facility of interstate commerce; and
4 Two, that the use of any interstate facility was done with the
5 intent that a murder be committed in violation of the laws of
6 the State of Missouri; and Three, that anything of pecuniary
7 value was received or promised or agreed to be paid as
8 consideration for the murder; and Four, the death of Melvin B.
9 Griesbauer resulted. Count One of the indictment charges each
10 defendant with the charge of conspiracy to commit murder for
11 hire. Earlier in these instructions, I defined the elements
12 of the offense. You may use these definitions in considering
13 whether each defendant conspired to commit murder for hire.

14 Instruction 30, It is not necessary that the act done
15 in furtherance of the conspiracy be in itself unlawful. It
16 may be perfectly innocent in itself. It is not necessary that
17 each defendant have personally committed the act, known about
18 it, or witnessed it. It makes no difference which of the
19 conspirators did the act. This is because a conspiracy is a
20 kind of partnership so that under the law, each member is an
21 agent or partner of every other member, and each member is
22 bound by or responsible for the acts of every other member
23 done to further that scheme. It is not necessary that the
24 Government prove beyond a reasonable doubt that more than one
25 act was done in furtherance of the conspiracy. It is

1 sufficient if the Government proves beyond a reasonable doubt
2 one such act, but in that event, in order to return a verdict
3 of guilty, you must unanimously agree upon which act was done.

4 Instruction number 31, It is not necessary for the
5 Government to prove that the conspirators actually succeeded
6 in accomplishing their unlawful plan.

7 Instruction number 32, You may consider acts
8 knowingly done and statements knowingly made by a defendant's
9 coconspirators during the existence of the conspiracy and in
10 furtherance of it as evidence pertaining to each defendant
11 even though they were done or made in the absence of and
12 without the knowledge of each defendant. This includes acts
13 done or statements made before each defendant has joined the
14 conspiracy, for a person who knowingly, voluntarily, and
15 intentionally joins an existing conspiracy is responsible for
16 all of the conduct of the coconspirators from the beginning of
17 the conspiracy. Acts and statements which are made before the
18 conspiracy began or after it ended are admissible only against
19 the person making them and should not be considered by you
20 against each defendant.

21 Instruction number 33, The crime of murder for hire
22 as charged in Count Two of the indictment has four elements
23 which are: One, that a person at or about the time charged in
24 the indictment used or caused another to use any facility of
25 interstate commerce; and Two, that the use of any interstate

1 facility was done with the intent that a murder be committed
2 in violation of the laws of the State of Missouri; and Three,
3 that anything of pecuniary value was received or promised or
4 agreed to be paid as consideration for the murder; and Four,
5 the death of Melvin B. Griesbauer resulted. If all of these
6 elements have been proved beyond a reasonable doubt as to each
7 defendant, then you must find each defendant guilty of the
8 crime charged. Otherwise, you must find each defendant not
9 guilty of this crime.

10 Instruction number 34, A person may be found guilty
11 of murder for hire even if he personally did not do every act
12 constituting the offense charged if he aided and abetted the
13 commission of murder for hire. In order to have aided and
14 abetted the commission of murder for hire, one, a person must
15 before or at the time the crime was committed have known
16 murder for hire was going to be committed, and two, a person
17 must before or at the time the crime was committed have
18 knowingly acted in some way for the purpose of causing,
19 encouraging, or aiding murder for hire, and three, a person
20 must before or at the time the crime was committed have
21 intended that a facility of interstate commerce be used for
22 the commission of a murder, and four, the death of Melvin B.
23 Griesbauer resulted. For you to find a defendant guilty of
24 murder for hire by reason of aiding and abetting, the
25 Government must prove beyond a reasonable doubt all the

1 elements of murder for hire were committed by some person or
2 persons that the defendant aided and abetted that crime;
3 otherwise, you must find that particular defendant not guilty
4 of this crime under Count Two.

5 You should understand that merely being present at
6 the scene of an event or merely acting in the same way as
7 others or merely associating with others does not prove that a
8 person has become an aider or abettor. A person who has no
9 knowledge of the crime that is being committed or about to be
10 committed but who happens to act in a way which advances some
11 offense does not thereby become an aider or abettor.

12 Instruction number 35, You are instructed that the
13 law of the State of Missouri, Section 565.020 of the Missouri
14 Revised Statutes, provides that a person commits the crime of
15 murder in the first degree if he knowingly causes the death of
16 another person after deliberation upon the matter. The law of
17 the State of Missouri further provides that deliberation means
18 cool reflection for any length of time no matter how brief.

19 Instruction number 36, Under the statute upon which
20 Counts One and Two of the indictment are based, the term
21 "anything of pecuniary value" means anything of value in the
22 form of money, a negotiable instrument, a commercial interest,
23 or anything else, the primary significance of which is
24 economic advantage.

25 Instruction number 37, Under the statute upon which

1 Counts One and Two of the indictment are based, the term
2 "facility of interstate commerce" includes means of
3 transportation and communication.

4 Instruction number 38, Under the statute upon which
5 Counts One and Two of the indictment are based, the term "as
6 consideration for" means consideration in the traditional
7 sense of bargained-for exchange. The term "consideration"
8 includes payment or the promise to pay later.

9 Instruction number 39, Intent or knowledge may be
10 proved like anything else. You may consider any statements
11 made and acts done by each defendant and all the facts and
12 circumstances in evidence which may aid in the determination
13 of each defendant's knowledge or intent. You may but are not
14 required to infer that a person intends the natural and
15 probable consequences of acts knowingly done or knowingly
16 omitted.

17 Instruction number 40, The law does not require the
18 prosecution to call as witnesses all persons who may have been
19 present at any time or place involved in the case or who may
20 appear to have some knowledge of the matters in issue at this
21 trial, nor does the law require the prosecution to produce as
22 exhibits all papers and things mentioned in evidence. The
23 jury will always bear in mind that the law never imposes upon
24 a defendant in a criminal case the burden or duty of calling
25 any witnesses or producing any evidence, and no adverse

1 inferences may be drawn from her failure to do so.

2 Instruction number 41, In conducting your
3 deliberations and returning your verdict, there are certain
4 rules you must follow. I will list those rules for you now.
5 First, when you go to the jury room, you must select one of
6 your members as your foreperson. That person will preside
7 over your discussions and speak for you here in court.
8 Secondly, it is your duty as jurors to discuss this case with
9 one another in the jury room. You should try to reach
10 agreement if you can do so without violence to individual
11 judgment because a verdict, whether guilty or not guilty, must
12 be unanimous. Each of you must make your own conscientious
13 decision but only after you have considered all the evidence,
14 discussed it fully with your fellow jurors, and listened to
15 the views of your fellow jurors. Do not be afraid to change
16 your opinions if the discussion persuades you that you should,
17 but do not come to a decision simply because other jurors
18 think it is right or simply to reach a verdict.

19 Third, if the defendant is found guilty, the sentence
20 to be imposed is my responsibility. You may not consider
21 punishment in any way in deciding whether the Government has
22 proved its case beyond a reasonable doubt. Fourth, if you
23 need to communicate with me during your deliberations, you may
24 send a note to me through the marshal or bailiff signed by one
25 or more jurors. I will respond as soon as possible either in

1 writing or orally in open court. Remember that you should not
2 tell anyone, including me, how your votes stand numerically.
3 Fifth, your verdict must be based solely on the evidence and
4 on the law which I have given to you in my instructions. The
5 verdict, whether guilty or not guilty, must be unanimous.
6 Nothing I have said or done is intended to suggest what your
7 verdict should be. That is entirely for you to decide.

8 Finally, the verdict form is simply the written
9 notice of the decision that you reach in this case. The form
10 reads as follows: In The United States District Court for the
11 Eastern District of Missouri, Eastern Division, United States
12 of America, plaintiff, versus Katherine A. Mock and Elain Kay
13 Young, defendants, case S1-4:09-CR-679 HEA. Verdict, Count
14 One, we, the jury, find the defendant, Katherine A. Mock,
15 guilty or not guilty of the crime charged in Count One of the
16 indictment. Count Two, we, the jury, find the defendant,
17 Katherine A. Mock, guilty or not guilty of the crime charged
18 in Count Two of the indictment. A signature line for the
19 foreperson and a signature line for the date.

20 In the United States District Court for the Eastern
21 District of Missouri, Eastern Division, United States of
22 America, plaintiff, versus Katherine A. Mock and Elain K.
23 Young, defendants, case number S1-4:09-CR-679 HEA. Verdict,
24 Count One, we, the jury, find the defendant, Elain Kay Young,
25 guilty or not guilty of the crime charged in Count One of the

1 indictment. Count Two, we, the jury, find the defendant,
2 Elain Kay Young, guilty or not guilty of the crime charged in
3 Count Two of the indictment. A signature block for the
4 foreperson as well as a block for the date.

5 You will take these forms to the jury room, and when
6 each of you has agreed on the verdict, the foreperson will
7 fill in the form, sign and date it, and advise the marshal or
8 bailiff that you are ready to return to the courtroom.

9 Mr. Dittmeier, counsel for the Government, you may
10 proceed with your closing argument. And, Counsel, if you want
11 to use the instructions during your arguments, they will be
12 with the court clerk.

13 MR. DITTMEIER: May it please the Court, attorneys.
14 Ladies and gentlemen of the jury, as the judge just told you,
15 this part of the case is called closing argument, and what it
16 does, it gives the attorneys an opportunity to review the
17 evidence with you and tell you what they feel the evidence has
18 proven and shown. I want to remind you though, a closing
19 argument is not evidence, so if any attorney gets up here and
20 they refer to a piece of evidence or misstate a piece of
21 evidence, it is the way you remember the evidence. You are
22 the triers of fact, and you have all listened to this case
23 carefully. You know what evidence has been presented up
24 there, and you can review it.

25 Now before we review the evidence, there is a few

1 instructions I want to go through. You listened to all the
2 instructions, and you will have them back in the room, but
3 just a couple of them. If you recall the elements of the
4 crime, and the Government has to prove these beyond a
5 reasonable doubt, element one, "that a person at or about the
6 time charged in the indictment used or caused another to use
7 any facility of interstate commerce," well, if you recall that
8 phone call from Kay Young to Kathy Mock when she made the
9 offer to Keri Ponder about killing for \$6,000, that's an
10 interstate facility. That phone call was an interstate
11 facility. When Jean Ballard is called by Kathy Mock and says,
12 I am going to the hospital, when, in fact, she was going up to
13 Novinger to effect the murder, that is the use of an
14 interstate facility. When Kathy Mock is on the way up to
15 Novinger and she stops and uses her ATM card and buys that
16 mask and then that ATM card is communicated through the air
17 waves to the banks, that is interstate. So clearly interstate
18 facilities have been used in furthering this crime. Also,
19 every mail, every phone call to the insurance companies, that
20 is all using interstate facilities. So obviously Count One
21 has been satisfied.

22 Count Two is that any interstate facility was done
23 with the intent that a murder be committed. Well clearly that
24 is what this is all about. What they were doing for that
25 period of time, those several weeks, everything was geared to

1 this murder being committed, from buying the mask to trying to
2 collect what the true crime is, to get the insurance, the life
3 insurance money. So that element has been met.

4 The third element is that anything of pecuniary value
5 was received or promised or agreed to be paid as
6 consideration. Well, there is over a million dollars of
7 insurance that they are trying to collect. There's been 6,000
8 offered to Keri Ponder. There's been 10,000 offered to Thomas
9 Ponder. And when you look at the financial situation of both
10 defendants, you know that money was coming from that loan Kay
11 Young was trying to get and eventually the rest of it would
12 come from the insurance. So, of course, they were talking
13 about money. They were offering money, and Kathy Mock clearly
14 when she tells Jean Ballard I'm going to be coming into some
15 money soon, I will pay you back the money I owe you plus some,
16 there is money promised. That is the third element.

17 And the fourth element, "resulted in the death of
18 Melvin Griesbauer," obviously, that has been met. There is no
19 dispute he was murdered. He was murdered in cold blood. He
20 was executed up there at that barn. So that fourth element
21 has been met.

22 The next instruction I want to mention to you and the
23 judge just read it to you, it involves the conspiracy, and
24 also really you have got an aiding and abetting which tells
25 you if two people are doing something and one aids and abets

1 the other one, they are a principal. The acts of one are
2 attributed to the acts of another one as long as they are
3 moving in the same direction to accomplish the same purpose.
4 This instruction says it is not necessary that each defendant
5 have personally committed the act, known about it, or
6 witnessed it. It makes no difference which of the
7 conspirators did the act. This is because a conspiracy is a
8 kind of partnership so that under the law, each member is an
9 agent or partner of every other member, and each member is
10 bound by or responsible for the acts of every other member
11 done to further their scheme. So, for instance, when Kathy
12 Mock is in Republic, Missouri buying that mask, it's just as
13 if Kay Young was down there buying that mask. They are
14 conspiring. They are acting together.

15 The other instruction, and we talked about it in voir
16 dire, and that is hold the Government to proving each element
17 beyond a reasonable doubt. The Government expects you to hold
18 them to that burden, and I would submit that we have met that
19 burden. And when you read this instruction, it indicates --
20 and I am just going to read parts of it -- "a reasonable doubt
21 is a doubt based upon reason and common sense and not the mere
22 possibility of innocence. A reasonable doubt is a kind of
23 doubt that would make a reasonable person hesitate to act.
24 Proof beyond a reasonable doubt, therefore, must be proof of
25 such a convincing character that a reasonable person would not

1 hesitate to rely and act upon it. However, proof beyond a
2 reasonable doubt does not mean proof beyond all possible
3 doubt." And if you think about it, I probably couldn't prove
4 beyond all possible doubt that I am the same attorney that's
5 been in front of you the last five days. So I think you
6 understand that instruction.

7 But when it talks about a reasonable person acting,
8 you might relate to James Goodwin when he found that chatter
9 and he saw krisfarmstore and saw the chatter on there and it
10 clearly related to sex, and he says, I've been quiet, now you
11 can do what I want, and he knows that Kay Young's husband was
12 murdered, and he sees that she leaves her house at night
13 reluctantly when she don't want to and goes right over there
14 when he tells her to get her ass over there. He put that
15 together. That was a reasonable man. He knew that had
16 something to do with this murder, and he took that chat and he
17 mailed it in to the prosecuting attorney's office. So it's
18 not that sophisticated. It's just hold the Government to its
19 proof beyond a reasonable doubt.

20 Now let's take a look at the evidence, and let's
21 start going through it right at the beginning. Do you recall
22 that Elain Young was married four times. Her third husband
23 was David Crawford, and she divorced David Crawford on
24 March 23rd of 2003. And if you recall, Kay Young's friend,
25 Gayle Craigg, testified, and she said she started dating

1 Melvin Griesbauer in the fall of 2003. Well, by March 23rd of
2 2004, that is about six months, she was on his life insurance
3 policy as the major beneficiary, and I believe that was that
4 policy that was \$250,000 that moved up to \$400,000, but it was
5 a significant policy that after six months, they are not
6 married yet, she gets on his insurance policy as a
7 beneficiary. Does that sound familiar?

8 Think back again to James Goodwin. Melvin Griesbauer
9 is killed on March 23rd, and by the end of April, she is
10 already hooked up with James Goodwin. Remember, the first
11 part of May then, she goes and stays at his house for three
12 days. Well, within six months, October 23rd of 2006, just
13 about six months, she's on James Goodwin's insurance as a
14 beneficiary. And what does James Goodwin say? She asked him
15 to put her on as a beneficiary. It's not hard to infer that
16 that is the same thing that happened to Melvin Griesbauer
17 except it was a much, much larger amount of money involved
18 there.

19 Now here's something else. As you look through this
20 evidence and think about it, she is on Melvin Griesbauer's
21 insurance. As they move on through '04, she marries him.
22 September 5, 2004 she marries Mel Griesbauer. And you recall
23 in the stipulation that was made, he was deployed to go to
24 Iraq. That was October 15, 2004. Once they were married,
25 they lived together 40 days and he was gone. He didn't come

1 back until September the 20th of 2005. There was a short
2 period around Christmas in 2004 he was there, but other than
3 that, when you are reviewing this evidence, keep in mind, she
4 married him, he was gone October 15th, 40 days.

5 Now let's take a look and move into the summer of
6 '05. She has only lived with him 40 days after they are
7 married. We move to the summer of '05. What is she doing?
8 She is having an affair already with Kris Robins. And what
9 did he say? She really, really disliked her husband. How
10 could she dislike him that much in that short period of time?
11 He said she repeatedly said "I wish he was dead. I would like
12 to kill the sonofabitch." And he said she said it over and
13 over during that summer while he was with her. Now how do you
14 know that is true? Well, here's how you know. When you take
15 a look at that chat that James Goodwin came up with, in that
16 first paragraph -- and this is in May of 2007, and it's from
17 krisfarmstore, but Goodwin puts it together because she told
18 him she was having an affair with a guy. He thought it was
19 Chris Roberts, but her husband was in Iraq, and Chris
20 Roberts's wife was in the penitentiary. Well, Robins told you
21 his wife was in the penitentiary, so we're talking about the
22 same person.

23 When he sees that, him talking about thinking about
24 her cervix and then goes into the business about "I have kept
25 quiet, the least you can do is what I say," and then he gets

1 real assertive and says get over here and then she shows up
2 over there, Goodwin knows what that is, and he knows that "I
3 have stayed quiet," what's he staying quiet for? Well, Robins
4 explained that to you, the same thing that Goodwin inferred.
5 He stayed quiet because she said I would like to kill the
6 sonofabitch. I want him dead. And why did she tell him she
7 wanted him dead? "Because he was going to try and take my dog
8 business." They were only together 40 days and he is over in
9 a war zone. Do you think he was worried about her dog
10 business? The reason is made up, but it's hard to say I'm
11 looking to get his insurance money, his life insurance money,
12 so that is the excuse she gives to Robins.

13 Now what else is going on during that same period of
14 time? Well, she gets her profile, and she's got it on the
15 dating service, Adult Friend Finder, and that runs from July
16 to November of '05. And what's she got on that profile? Now
17 obviously in that profile, she is looking for sex. She's got
18 interested in one-on-one sex. She is looking for a
19 well-endowed male, somebody that knows how to make love to a
20 woman. But the sex isn't the important thing. When you read
21 that, there are phrases in there as to what she is looking
22 for, and she is looking for somebody on a more permanent
23 basis. She is looking for a partner. She is looking for a
24 companion. She wants somebody of a similar IQ because clearly
25 Melvin Griesbauer is beneath her, and she wants a commitment.

1 She wants a man who really knows how to be the man of the
2 house. Does that sound like Melvin Griesbauer is in her plans
3 at all? Once he gets back from Iraq, he is not going to be in
4 her plans for very long. You know that. You don't do this
5 after being married to somebody for 40 days. She's looking
6 for another man already, and she hooks up with Eschmann, Tim
7 Eschmann.

8 Now his profile, he is looking for one-on-one sex,
9 but pretty much he is a businessman. He is cutting back.
10 He's got a farm. He owns an airplane. From what you have
11 heard in this case, does that sound like somebody Kay Young
12 would be geared to? Somebody with money. And he takes her
13 flying for the first time on September the 12th -- or
14 September the 14th of 2005. Her poor husband, Melvin
15 Griesbauer, is coming back September the 20th. She is out
16 with this other guy six days before he comes home. And then
17 they see each other throughout the fall. Melvin Griesbauer is
18 there, but he is working nights. He is working up in this
19 meat packing company every night, and Eschmann never sees him.
20 She tells Eschmann we are going to be separated in the spring,
21 which Eschmann justifies that he can see her then. Well, they
22 were going to be separated, just not in the way Melvin
23 Griesbauer or Eschmann would have preferred. But she tells
24 him we will be separated. He takes her on another airplane
25 trip February the 25th of 2006, and that is when Eschmann and

1 Young fly down to Springfield for this dog and trade show, and
2 he meets Kathy Mock down there. Mock and Young are like this.
3 They are incredibly close. He flies her to Springfield, and
4 he meets Mock, and they spend the day together. That is only
5 a month before Melvin Griesbauer is going to get murdered.
6 Think about that. She is down there in Springfield with Mock
7 and she has her boyfriend flying her down there.

8 Now let's move into after the first of the year. We
9 start moving into March, and you have got some critical days
10 here, and almost every day in March is leading up to something
11 that tells you what the end result is going to be. March
12 the 13th of 2006 -- and keep in mind, Kay Young is obsessed
13 with keeping this farm. She needs the farm. She doesn't have
14 money. She is desperate. She's already since 2003 -- and
15 it's in the records that were put in trial -- has had two
16 different loans on this farm, and now she is trying to
17 renegotiate and redo another loan on the farm, and she needs
18 that loan. And there is that e-mail, and it's in Exhibit 27E,
19 she sends it to Nick Lessing, and she says that she can give
20 him another \$100 for the appraisal, but she says "my paycheck
21 is stretched very thin. I simply cannot stretch myself any
22 further and survive the month" -- she can't survive the month
23 of March -- "and I do not sell puppies for four weeks." So
24 any dogs she's got, if she can even sell them, is not going to
25 be until April. She is desperate. "I need the money, I can't

1 survive the month." That loan is important, extremely
2 important to her.

3 Now that is on March the 13th. We move into March
4 the 14th, and March 14th, if you recall, Keri Ponder told you
5 that is the day that Rita got bonded out, Rita Ponder got
6 bonded out of jail by Kathy Mock. Early that evening, she is
7 driving back from Jean Ballard's house with Kathy Mock, and
8 Kathy Mock gets a call from Kay Young, and when she hangs up,
9 Keri Ponder says what was that about, and Kathy Mock says Kay
10 says that her husband took out \$300,000 in life insurance on
11 her and told her she won't be around to enjoy it with him.
12 Well, where does that come from? Well, what it comes from is
13 Mock and Young were obsessed with the life insurance, and that
14 is what they had to throw out now this time. They had to
15 attribute that to Melvin Griesbauer. There is no evidence
16 here that he took out any life insurance on her, but that is
17 related to Keri Ponder because it's easier when you are going
18 to ask somebody to kill somebody to try and make it look like
19 that they are at least killing a bad guy rather than just some
20 poor guy who happens to have life insurance that you want.

21 So right after that phone call, Kathy Mock says to
22 Keri Ponder, Do you know of anybody that will kill Kay's
23 husband, and Keri Ponder says no. Well then she says to Keri
24 Ponder, Will you kill him. They would be willing to pay
25 \$6,000. Well, Kathy Mock is in the verge of having her car

1 possessed. She is behind on her house payments. They might
2 take her house. She don't have 6,000. We know from the
3 March 13th e-mail to Lessing that Young don't have 6,000, at
4 least she is not going to have it until she gets the loan on
5 March the 22nd and then later down the road when she collects
6 the life insurance. But she asked Keri Ponder will you do
7 this for \$6,000, and here is something that is really
8 significant. If you recall, Keri Ponder says, Why doesn't she
9 just divorce him. Logical question. And we know that Kay
10 Young's been divorced three other times. She knows the
11 process. She knows how to do it. And what does Kathy Mock
12 say? It's not that simple. It's not that easy. Well, why
13 isn't it that simple and why not that easy? Every one of you
14 could give me the answer right now. It's not that simple and
15 not that easy because she can't get this loan without Melvin
16 Griesbauer. He has to be put on the deed to the farm. You
17 heard Lessing testify to that. His salary, they both made
18 between 25 and 30,000 a year, and they needed both those
19 salaries in order to be able to get this loan. And as a
20 practical matter, even after she got the loan, if she
21 separated from Mel Griesbauer and he walked away with his part
22 of the salary, she still couldn't handle the bills. She
23 couldn't save that farm. So that is why it wasn't so simple
24 and it wasn't so easy. She couldn't leave him or divorce him.
25 She needed him on that deed, and she needed the insurance

1 money.

2 And when you take a look and evaluate the credibility
3 of the witnesses -- and listen, every witness the Government
4 puts on there, be critical of them. Analyze them, be critical
5 of the witnesses, but be fair. And if you are, you are going
6 to find right down the line they were telling the truth. Did
7 you see Keri Ponder's reaction when she said that she offered
8 her the 6,000? Do you recall when she started crying on the
9 stand? She was looking over at Kathy Mock. Well, that was a
10 significant moment because they both know that is true. That
11 is why she broke down. That conversation took place. And she
12 didn't want to be up here saying it, but she did. And you are
13 told with Keri Ponder when you take a look at her, consider
14 she's got a criminal record. She's got a felony conviction
15 for assault. But isn't somebody with a felony conviction
16 somebody you would approach to see if they would do a murder?
17 Obviously.

18 Now that is on the 14th. The offer's been made, and
19 it is made right after a phone call from Kay Young. But let's
20 move on. Wednesday was the 15th. The next day is March
21 the 16th of '06, and that's the day that Keri Ponder has to go
22 over to Jean Ballard's to spend the night so Ballard can take
23 her to the bus stop in Joplin on March the 17th. And what
24 happens there? That night over there, Keri Ponder said, Well,
25 she asked me to kill him, but I just thought it was talk.

1 Well truthfully, ladies and gentlemen, she thought it was a
2 little bit more than that because the night of March 16th --
3 now this is a week before the murder on the 23rd -- she tells
4 Jean Ballard, so it's not like just another conversation. She
5 tells Jean Ballard that Mock had asked her to kill Kay's
6 husband. That is not after the fact. That is not made up.
7 That was told on March the 16th.

8 Now the reason Mock wasn't there to take her to the
9 bus is Kathy Mock and her other daughter-in-law, Rita Ponder,
10 went up to Novinger, Missouri the 16th and the 17th to spend
11 with Kay Young. And then she comes back on the 17th, and what
12 occurs then? The first time with Keri Ponder, it's a
13 telephone call. Now it's a face-to-face meeting with Kay
14 Young up in Novinger. She comes back, and she approaches her
15 son, Thomas Ponder, and says, Do you know anybody that will
16 kill Kay's husband. We'll pay \$10,000 for it, and he says no.
17 But she tells him that Melvin Griesbauer is abusive and
18 ex-military. So now we have got he's going to take the dog
19 business, he took out 300 in life insurance, and now the next
20 story is he is abusive and ex-military. It depends on who you
21 are talking to. You appeal to whatever you think will
22 motivate them and get them to do it. But it is significant
23 because she comes back from Novinger and approaches her son.
24 Once again, Thomas Ponder, he's got two felony convictions.
25 He is addicted to meth. Who else do you go to to get a murder

1 done.

2 Now after the 17th, you move on through that weekend,
3 and on March the 20th, she goes to Thomas Ponder again and
4 says I am going up to Kay's house on March the 22nd after
5 Jason is sentenced that morning. She wants Thomas Ponder to
6 go up there with her, and he has got enough sense not to do
7 that. He is not going up with her. But then we get to the
8 morning of March the 22nd, and what happens that day? Well,
9 Kathy Mock and Rita Ponder go to the sentencing of Jason that
10 morning, and on the way back from the sentencing, Kathy Mock
11 tells Rita Ponder I'm going to the hospital in Joplin for my
12 stress for awhile, so I am not going to be here. Rita Ponder
13 goes and cleans the kennels. She comes back to the house at
14 1:30, and Kathy Mock is gone. I mean, the murder now is --
15 it's in motion. It's moving right now. She is on her way to
16 Novinger, but she told Rita that she was going to the
17 hospital. And after she leaves her at some point, she makes a
18 telephone call, another interstate facility, to Jean Ballard
19 to tell Jean Ballard I am going to the hospital and I will be
20 there about three days. But she is not.

21 She stops in Republic, Missouri 2:25 p.m. and buys
22 that ski mask. The plan is coming together, and now she is
23 heading up to Novinger. What's happening that morning? Kay
24 Young is re-doing the loan with Lessing, and they get their
25 loan. And remember, she hired Arbitronix. It is a place to

1 negotiate your bills down with your debtors, and they
2 consolidate them, and she gets her loan. And this is
3 significant. What did Lessing say she kept saying? She
4 wanted to get the loan, get the bills paid. Do you recall
5 what she said? And he said she was adamant. She had to walk
6 away from this with \$10,000. You think that's the \$10,000
7 they were talking about giving to Thomas? That is not a
8 coincidence that Kathy Mock says we'll pay \$10,000 and all the
9 way up in the northwest part of the state Kay Young is telling
10 the guy she is getting the loan from, "I have to walk away
11 from this with \$10,000." They needed that \$10,000 for any
12 initial payment on that murder. And she gets her loan, and
13 Melvin Griesbauer that day is put on the deed to that farm,
14 and when that happens, he's got about 15 hours to live.

15 Now what else is happening on the 22nd? On March
16 the 22nd, Rita Ponder, who is back in Cassville, calls Thomas
17 Ponder to come over and fix her car, and I think he gets over
18 there about 7:30 p.m. that night, and she said, Well, your
19 mother went into the hospital for stress, and Thomas Ponder
20 goes, She didn't go to the hospital. She is up with Kay Young
21 in Novinger, Missouri, and she came to me and offered me
22 \$10,000 or wanted me to find somebody for \$10,000 to kill
23 Kay's husband. That is hours before the murder ever happened.
24 That is not made up. Now you may think Thomas Ponder knew a
25 little bit more about it because if you recall when Ms.

1 Herndon was cross-examining Jean Ballard, Jean Ballard said
2 that Thomas Ponder told her I was offered \$10,000 to kill him,
3 I declined it, but I told her if you do it, make sure you wear
4 a mask and gloves so you don't get blow-back from the gun.
5 Does that sound familiar with the gloves and the gun -- or the
6 mask up there? Of course it does.

7 Now we move on from March the 22nd, and we are
8 getting down to the critical time now. And Kay Young told
9 Sheriff Leonard Clark that she got a call at 1:04 a.m. from
10 her husband to come into Kirksville and pick him up, he was
11 coming home from work. And she said it took her about 20
12 minutes to get in there. So let's say she picked him up at
13 1:25. They are going to be back between 1:40 and 1:45.
14 2:01 a.m. a 911 call comes out that there has been a shooting
15 at the farm. 2:03 a.m. Officer Salsberry is dispatched to go
16 to the farm, and he goes over there and he goes up -- comes
17 up, he sees them waving the flashlight. He goes up there.
18 Young and Mock are the only two there, and they're huddled in
19 front of the kennel. Melvin Griesbauer is over by the barn,
20 and he is dead.

21 And you listen to that 911 call. Here's both of
22 them, they are up there, and on that call, they are just so
23 upset. They are on the verge of hysteria. If you hear Mock,
24 she is doing most of the talking, but in between if there is
25 silence, she is moaning into the phone, and then Kay Young

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1 comes on the phone, and she is upset, and she says "I can't do
2 this". Now this is the same Kay Young that said "I would like
3 to kill the sonofabitch" just the summer before, okay? She is
4 the one that is sending Mock out to hire these people to come
5 up to help do the murder. Mock knows she talked to Keri
6 Ponder. That was all an act, ladies and gentlemen. And on
7 that phone call if she says it once, she says it several
8 times. I'm not going to quantify how many times she says it,
9 but Kathy Mock goes, Kay came home, he went out to take care
10 of the horses or whatever, and Kay heard a shot, came up and
11 got me up out of bed, and I got dressed and I went up to the
12 barn. She repeats that several times on the 911 call. And
13 then later when Salsberry talks to her at the back of the
14 ambulance, Kathy Mock again tells him what happened, that Kay
15 heard a shot, and I was up in bed, she came up and woke me up
16 and took me up to the barn. But the glitch here is that when
17 Salsberry was there and Burns came up when they checked Melvin
18 Griesbauer, they are familiar with weapons, and they noted
19 that that gun was cocked because they were thinking an
20 accident or a suicide. He told you that. They see that gun
21 cocked, and they see a live round in there. That had to be
22 done after the murder. And if you recall, Salsberry says at
23 that point, we thought it was a homicide. They pulled their
24 weapons, took their flashlights and started -- went into the
25 barn. They found that shell casing and looked around. They

1 still weren't focused on the two women. They are looking for
2 somebody else. And I specifically asked Salsberry, I said,
3 Did you ever say in front of the women that that gun was
4 cocked with a round in there. He said no, we kept that to
5 ourselves. We didn't convey that to them.

6 So now what happens? They go back down to the house,
7 and Sheriff Leonard Clark shows up. He was a friend of Kay
8 Young's mother. He knew the mother and he knew the Young
9 family. He says he goes in the house, gives his condolences
10 to Kay Young, and when Corporal Wilhoit shows up, they sit
11 down and talk to her. And what story does she give them? She
12 tells them in detail how she went in and she picked him up.
13 She brought him back to the house. He went in and got a coat
14 and went up to the barn to check his babies, the dogs, and he
15 was going to check his traps, and she is working in the house
16 and she hears this gunshot, and she hollers out the back door,
17 but he don't answer, but he is hard of hearing, but she is
18 extremely concerned. Now keep in mind, in that same
19 statement, she says he is shooting up around the barn all the
20 time. So why this intense concern that night, we don't know.
21 But she is concerned, so she goes upstairs, wakes up Kathy
22 Mock. Kathy Mock gets dressed. The stories are in lock-step.
23 Kathy Mock comes down. They go up to the barn, and they find
24 him dead.

25 Now what else does she tell Sheriff Clark? She tells

1 Clark that he was in a really good mood when he came home that
2 day because they got that loan, and he was excited about going
3 out and buying lumber. Now he just signed a 30-year loan, and
4 they were having trouble making it, and he is going to be
5 excited about going out and getting lumber? But he signed
6 this 30-year loan. He is going to go get lumber. He doesn't
7 know that he is not going to be around. He is not privy to
8 the separation talk with Eschmann. He doesn't know this is
9 going to happen. He thinks they are okay because he wasn't
10 part of the murder plot. He didn't know what's been going on
11 for the last six months.

12 What else does she emphasize, really emphasize, to
13 Sheriff Clark? He was so careless with the gun. He walked
14 around with the gun cocked all the time. It was so dangerous.
15 He kept that gun cocked. Just a knock, that hammer would fall
16 and it would fire. Now this guy is a war vet. He's handled
17 rifles over there. Do you really think that he walked around
18 all the time with the hammer back on that gun? But she had to
19 tell them that because they were so intent on trying to make
20 this look like an accident. She knew that gun was cocked up
21 there, and she is trying to touch every base and answer it
22 all. But here's what happens. When Leonard Clark gets
23 finished interviewing them, and there's nothing -- they don't
24 ask her about that gun being up there cocked, she just tells
25 her story. She is allowed to leave, and they go over to her

1 son, Jared's, which is about three miles from there. The
2 police get a search warrant, and they continue their
3 investigation. Well, when they go over -- Leonard Clark goes
4 over about 4 that afternoon to take the buccal swabs. They
5 have Mock and Young sit down, and they take that swab on the
6 inside of their cheek to check for the DNA. Mock and Young
7 clearly now know this isn't being looked at like an accident
8 anymore. There is somebody that suspects a murder. The
9 wheels are starting to come off this plan.

10 So he leaves at 5. At some point, they go back to
11 the house that night because Kathy Mock's truck is sitting
12 back there. And if you recall, Lieutenant Hall said they
13 searched Mock's truck and didn't find any pills in it, and he
14 searched her purse and didn't find any pills, and Kathy Mock
15 had just travelled up there. But they go back, she has to get
16 her vehicle. But what else did Lieutenant Hall tell you?
17 When you do a search warrant, you leave an inventory, and you
18 list everything that you took off the premises is on that
19 inventory. What was on that inventory? That they had found
20 the mask and the gloves that had been pitched on that far side
21 of the house. So now they have got buccal swabs. They found
22 the mask and the gloves that were part of the murder. The
23 wheels are really coming off.

24 Mock leaves there and heads back to Southwest
25 Missouri in her car. And whatever time she left there, we

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1 know she got back to Jean Ballard's house in Exeter, which is
2 right by Cassville, about 2:30 a.m. because she calls Ballard.
3 Ballard comes home from -- she is up north in Clinton,
4 Missouri. She comes home, gets home about 6:30. And what
5 happens? Well, the phones are used again. Kay Young calls
6 Ballard and says, How is Kat, and she says she's been
7 sleeping. Kay Young says, Well, don't upset her, don't upset
8 Kat, and when she wakes, tell her I love her. She is trying
9 to stay connected to that part. She is trying to stay
10 connected and keep her finger on the pulse of what Mock is
11 doing down there. And you will also recall when asked to
12 describe their relationship by Sheriff Clark, Young said "we
13 cherish the time we spend together." Her and Kathy Mock
14 "cherish the time we spend together." But when she calls
15 Ballard and says tell Kat I love her, what is missing out of
16 that conversation? Don't upset Kat? Wouldn't you think you
17 might tell her what Kat might be upset about, that my husband
18 was killed up here and that she saw it? That is a glaring
19 omission. That would be the first thing you would say. She
20 is under a lot of stress, this happened, so just take care of
21 her. She doesn't tell her what the problem is. Then Mock
22 wakes up and gets sick, and Ballard says have you taken some
23 pills, and she pulls this -- you saw that, what did they say,
24 108 pills were in there -- and said she took some handfuls of
25 these. And Ballard then takes her to the hospital, and they

1 get -- and if you recall, Ballard said that Young called
2 several times that morning checking on her but wasn't saying
3 that her husband was dead. Just tell Kat I love her and how
4 is she.

5 They get to the hospital, and Ballard says where did
6 these pills come from, and she says Kay gave them to me. She
7 told me to get to your house and take the pills and that you
8 would take me to the hospital and then I could get time in a
9 psych ward and not go to the penitentiary. Well, ladies and
10 gentlemen, doesn't that -- remember Amanda Bax testifying, and
11 she says Kay Young told her that she had Mock looking to get
12 people to do the murder for them, but that Mock was going to
13 be the fall guy. Well, once they knew the police was onto it,
14 Mock was the one who was going to take the pills and try and
15 get into the psych ward for a period of time so she wouldn't
16 get charged with it, but Young now is trying to put her
17 distance with her. She is still manipulating and trying to
18 work the pieces on this thing. Kathy Mock that morning calls
19 her daughter-in-law, Rita, and says I'm going to the
20 penitentiary.

21 So what else happens on the 24th of March, that's a
22 Friday? Well, that night with everything that is going on,
23 Rita Ponder has this knowledge. She knows about this murder
24 that was committed up in Novinger, Missouri. She calls her
25 mother. She is frightened, and she calls Chris Buchholz, a

1 Cassville policeman, who comes out about 11:00 p.m. on Friday
2 night, and she tells him about these offers of money to kill
3 Beau Griesbauer and tells about this murder. He doesn't know
4 anything about this murder. He hasn't heard anything about
5 it. So it is in the early morning hours of March the 25th, he
6 calls up to Kirksville to get the Adair County Sheriff to see
7 what is going on, tells them what he knows, and they know that
8 this information is significant. We do have a murder like
9 that. It is related up here. We are on our way down, and the
10 Highway Patrol investigators are down there that Saturday.
11 You know, it's a six, six and a half hour drive, but they get
12 down there on Saturday, and they interview Thomas Ponder, they
13 interview Rita Ponder, and they interview Jean Ballard. But
14 they are down there on the 25th, and that is when Thomas
15 Ponder gives them that bag of pills. And you know that Kay
16 Young, she was a nurse. She's got access to those pills, just
17 like she had access to the pills she gave James Goodwin.
18 Remember when he couldn't get an erection, and who has the
19 pills? Kay Young provides them. And you remember what Mock
20 told Ballard when they got her to the hospital and said Kay
21 told me to take them, "Kay is a nurse. She knows what she's
22 talking about." Kay Young was running the show here. It's
23 that simple.

24 Then you have got that on Saturday and we move
25 through to the 26th, and here is something else now that is

1 significant. On the 27th -- they don't interview Thomas
2 Ponder until Saturday night, March the 25th. We move into
3 Monday, March the 27th, and who goes to the Highway Patrol?
4 Normane Newlin. And when I tell you to be critical of the
5 witnesses but be fair, Newlin is one of them you want to be
6 critical of. They brought in the mayor of Novinger to say
7 that he didn't have a good reputation for truthfulness. You
8 shouldn't doubt that for a second. That is probably true, but
9 what does Newlin come in and tell them? He says that David
10 Crawford, her third husband, Newlin was working on the farm
11 out there, and the two of them were in the hot tub together,
12 Newlin and Kay Young, and she says -- and he was having
13 trouble with his wife. She says, I will kill your wife if
14 you'll kill David Crawford. Why did she want Crawford -- now
15 here is another reason. Why did she want Crawford killed?
16 Because he was on the deed to the farm, and the two of them,
17 they got divorced March 23rd of 2003, so she was afraid she
18 would either lose the farm or lose part of it in a divorce,
19 the fact that Crawford's name had been put on that farm. Does
20 that sound familiar? Does that sound familiar of what was
21 going on with Melvin Griesbauer? And that is why she is
22 asking that.

23 How would Normane Newlin know whose names were on the
24 deed to the farm if Kay Young didn't tell him? And what does
25 he say? She offered to kill my wife, take her horseback

1 riding and hit her in the head and make it look like an
2 accident. Well, what have we got up at the barn with Melvin
3 Griesbauer? The gun is cocked, we are laying the ground work
4 about how careless he is. That is supposed to look like an
5 accident. Are you seeing the parallels here with what Normane
6 Newlin said? What else has Normane Newlin said? She said she
7 would not only kill my wife, but she would give me \$10,000.
8 There is no way he knew that on March the 25th, Thomas Ponder
9 said that there was \$10,000 being offered to kill Melvin
10 Griesbauer. Newlin couldn't have known that on Monday. You
11 look at those factors to look at how reasonable the testimony
12 it is and how believable it is. She tells Lessing I have got
13 to come away from this loan, I have to walk out of here with
14 10,000. She walked out with \$10,800. She offered -- or
15 Thomas Ponder is offered 10,000 to do the murder. Newlin,
16 10,000 was going to be thrown into his deal back in 2003.

17 Ladies and gentlemen, right down the line it's
18 consistent. What else does Newlin tell you, talking about his
19 credibility? He said, Well, she was a heck of a shot. I saw
20 her standing in the garden and shoot a dog up by the barn and
21 kill it. Their witness, Gayle Craigg, said, oh, she shot
22 stray dogs all the time. He was telling the truth about that,
23 wasn't he? Normane Newlin said she always had a stun gun in
24 her car. Nick Berry pulls her over at the time of the arrest
25 on the murder, what's she got in the car? A stun gun. Newlin

1 was telling the truth on that.

2 And what happens now? He's killed March 23rd, and by
3 the end of April, she hooks up with Jim Goodwin, the old man,
4 who is just elated to have a woman that's younger than him.
5 Then by June, she's still got her financial problems. She
6 borrowed money from Goodwin. They have some sexual contact.
7 They go through the summer. They are getting closer. By
8 September, she borrows \$1,500 to pay a lawyer in Columbia
9 still trying to get her death certificate because obviously
10 with the circumstances here, she was having problems doing
11 that. Goodwin drives her to Columbia for that, and then she
12 asked Goodwin to get on his life insurance, and October 23rd
13 he puts her on the life insurance. It's a pattern, ladies and
14 gentlemen, all the way through.

15 And then you have Amanda Bax. Now that is a woman
16 who has six felony convictions. She is doing time right now,
17 so you have to be very critical of her, but what did she
18 testify to? She said that Kay Young said I shot my husband.
19 Did she give you anymore details about what happened there at
20 the barn? No. But what does she get into? She got into
21 talking about her farm with Amanda Bax, and she said the farm,
22 my family's had the farm for years and years. Amanda Bax
23 couldn't know how long her family had that farm. And what
24 else did she tell her? She told her that she was having
25 financial problems, that her husband had a million-dollar life

1 insurance, million dollars in life insurance, and she had to
2 have that to pay the farm off. And what did she say to Amanda
3 Bax that just tells everything? It's not losing her dog
4 business. It's not because somebody's taking insurance money
5 out on her. It's not because her husband is abusive. What
6 does she tell Amanda Bax? "I would rather lose a husband than
7 lose the farm." She was willing to lose David Crawford rather
8 than lose the farm. And, in fact, she did kill her husband,
9 Melvin Griesbauer, in order to keep the farm.

10 And all you have to do is look at that initial story
11 that Kathy Mock told there that night, the initial story that
12 Kay Young told there that night, they were right in lock-step.
13 They talked about that story before the murder ever happened
14 and before the wheels started coming off of this thing. And
15 based on this evidence, ladies and gentlemen, you put it
16 together. You follow it through. You can't reach any other
17 conclusion except both these defendants are guilty of both
18 counts they are charged with. Thank you.

19 THE COURT: Mr. McGraugh.

20 MR. MCGRAUGH: Thank you, Your Honor. May I have a
21 moment. I want to get some exhibits from the Government.

22 THE COURT: Sure.

23 MR. MCGRAUGH: May it please the Court, attorneys for
24 the Government, attorneys for Ms. Young. May it please you,
25 ladies and gentlemen of the jury. First I would like to just

1 tell you how much we appreciate your willingness to serve as
2 jurors in this case, and we understand what a case like this
3 does, and we understand the patience you had to expend to sit
4 here. I know there was a lot of interruptions and I know a
5 lot of things are occurring in this case, and I understand
6 that and realize it is difficult. Serving as a juror is not
7 only a duty in our democracy, but it is probably next to
8 serving your country in times of war the highest duty we do
9 here. The courts cannot function without you, so we
10 appreciate it.

11 At voir dire, I painstakingly went through it. I
12 know that my voir dire, my jury selection, was very difficult
13 because it took a long time, and we constantly went over these
14 concepts, these concepts of presumption of innocence, these
15 concepts of burden of proof. And in order for you to be
16 selected as a juror in this case, you had to commit, you had
17 to swear, you had to take an oath that you could follow those
18 principles of law, that you would hold the Government to its
19 burden of proof, making them prove each element of the case
20 beyond a reasonable doubt and that you would presume Kathy
21 Mock innocent. That's the only reason you were selected as
22 jurors. There were a number of jurors that couldn't do that,
23 and they were excused, but you said you could do it, and you
24 took an oath that you would follow that instruction.

25 Now I spent that much time on that because I realized

1 what kind of case this was. I realized how difficult a case
2 this would be to hear from a juror's perspective because our
3 natural inclination, our human nature, would dictate that
4 realizing Melvin Griesbauer was murdered, that you would want
5 to have someone take responsibility for that murder and be
6 punished for it. I understood that. I knew that. But that
7 is not enough. And in order for you to follow the law in this
8 case, in order for you to follow the law in this case, I knew
9 that if you followed the law, that Kathy Mock would not be
10 found guilty, should not be found guilty of this case if you
11 follow the law.

12 Now Kathy Mock did not enter into any agreement to
13 kill Melvin Griesbauer, and Kathy Mock did not kill Melvin
14 Griesbauer, not for money, not for any reason. Now you are
15 going to have a lot of questions about her when you go back to
16 that jury room. There is a lot of questions. And as I said
17 in opening statement, there was missing pages of this book.
18 There is unanswered questions, and questions you probably need
19 in order to deliberate in this case. But those questions are
20 not resolved against Kathy Mock. Those are resolved against
21 the Government. That affects your burden of proof. If you
22 don't have an answer to a question that you need, that has to
23 be assessed against the Government as to whether they maintain
24 their burden of proof.

25 Now let's talk about what we do know as it relates to

1 these instructions. Now the Court will give you these
2 instructions, and I will use my instructions because I have
3 highlighted them, but instruction number 27 is the element for
4 conspiracy to commit murder for hire, and the first element is
5 that two or more people have to reach an agreement with the
6 intent that a murder for hire be committed and death resulted.
7 Now I submit to you, ladies and gentlemen, that there is no
8 evidence of that. As it relates to this agreement or alleged
9 agreement, the evidence is sort of all over the place, and it
10 comes from, you know, Thomas Ponder and Keri Ponder and Rita
11 Ponder and Jean Ballard, and that testimony all sort of
12 conflicted. You know, if you were to believe them, you
13 couldn't believe one and believe another because their
14 testimony conflicted. But Thomas Ponder testified that Kathy
15 had asked him to kill somebody or kill someone, and then at
16 one time I think he said to kill Beau. It kind of went back
17 and forth one way or the other, but even if you were to
18 believe that conversation occurred or the context of that
19 conversation, the one thing you have to walk away from that is
20 what Thomas Ponder said, "I didn't take it seriously," and the
21 answer is no, no agreement. There was no agreement.

22 Now Thomas Ponder's testimony as I said conflicted
23 with Rita Ponder and it conflicted with Jean Ballard, and they
24 conflicted about the details, but one thing was consistent.
25 The one thing that was consistent was the answer was no. The

1 answer was there was no agreement. And you need that
2 agreement. You need someone to agree to commit a murder for
3 you to have a murder for hire, a conspiracy to commit murder
4 for hire, and the answer was no, and that was their proof for
5 that. So there was no agreement. Likewise, Keri Ponder
6 testified, you know, consistently that she was asked by Kathy
7 about killing someone or killing Beau. Again, she said I
8 didn't take it seriously, and the answer was no. Again, no
9 agreement. There was no agreement formed to kill Beau
10 Griesbauer for money from Thomas Ponder or Keri Ponder.

11 The one consistent fact amongst all those
12 witnesses -- what was interesting was the consistent factor
13 amongst all those witnesses, you know, had to do with not only
14 that the answer was no, but the fact is who Kathy Mock was at
15 that time, her emotional state at that time, kind of her
16 vulnerability, her being near collapse. All those witnesses
17 testified consistently about that. They all testified that
18 same way. And they also testified about another thing. They
19 testified that Kay Young was pressing Kathy Mock, was filling
20 her head with, you know, Melvin is abusing me. I mean, that
21 is what Thomas Ponder said, that Melvin Griesbauer was abusing
22 Kay. Where does that information come from? That comes from
23 Kay, and it's come to press that into Kathy's head because she
24 knew Kathy was vulnerable and that she was in danger of it. I
25 mean, we even know that from Rita Ponder when they are up in

1 Novinger. When they are up in Novinger, Kay is openly saying
2 this to Kathy, how she's in fear of her life. Jean Ballard
3 talks about it when she is blogging, blogging about this case.
4 She talks about going to dinner with them and that Kay was
5 openly talking about how abusive Melvin was.

6 But even more importantly is what Keri Ponder said.
7 Keri Ponder -- I found that testimony very interesting. When
8 she receives that phone call from Kay, Keri describes that as
9 there is a physical manifestation from Kathy. She is like --
10 you know, it affects her. She believes it. It's not what Mr.
11 Dittmeier says, that this is just they are coming up with
12 little schemes that they are trying to get out there. This is
13 Kay Young scheming. This is Kay Young manipulating Kathy, and
14 we know that to be true by Kathy's reaction to that phone
15 call, how she has reacted to it. Knowing Kathy, she sees that
16 she is slumped, she sees that she is upset. This is Kay Young
17 manipulating Kathy, putting into Kathy's head that Kay is in
18 jeopardy.

19 I submit to you, ladies and gentlemen, and we know
20 this from -- the other thing I will mention about this as well
21 is the testimony of Jean Ballard, that when asked about how
22 Kathy Mock was around Kay, Jean Ballard said she was helpless
23 when she was around Kay. Now I submit to you, ladies and
24 gentlemen, that that's just what happened, and I think -- and
25 what we know before these conversations take place in March of

1 '06, we know that Kay Young has that intention well before
2 that, well before Kathy Mock is ever in the picture, and we
3 know that from Mr. Robins. Robins says in like '04, '05 she
4 is talking about it. We know that that's what Kay's intention
5 is. Unfortunately for Kathy, she had no idea. All she knew
6 was what Kay was telling her, that Kay was in jeopardy.

7 Now you heard from that testimony that Kay Young
8 knows how to move pieces around the chess board. I mean, you
9 know that from the testimony of Mr. Goodwin. I mean, she had
10 Mr. Goodwin put her on his life insurance. We heard this from
11 the testimony of Newlin, how she would try to manipulate a
12 situation even to kill David Crawford and how she was going to
13 help him. We know that. We know that from other witnesses
14 that this is part of who she is, part of what she does. So
15 it's not a great leap, ladies and gentlemen, to believe that's
16 what she was doing to Kathy Mock. And we know that from the
17 testimony of Keri Ponder. We know from the testimony of Keri
18 Ponder how Kathy reacted to that information.

19 Now the other interesting thing about Keri Ponder was
20 this. Keri Ponder had come back to this area in order to move
21 back here with her kids. And I asked her were you moving back
22 here to find a stable place for your kids. Yes. A secure
23 place for your kids. Yes. A safe place for your kids. Yes,
24 that is what I was planning on doing. And even after she has
25 this conversation with Kathy -- and this would make sense.

1 This is why she said I didn't take it seriously, you know, I
2 didn't give it any credit, this conversation about killing
3 someone, I didn't take it serious. Well, you know why that is
4 true that Keri is telling the truth that she didn't take it
5 seriously was that even after that conversation and even after
6 Kathy was arrested, Keri Ponder was planning on moving her
7 kids down here, a safe, secure environment for the kids.
8 Would she be doing that, would that be her plan if she thought
9 that Kathy was really serious, that Kathy was part of some
10 plan like this? No.

11 Let me talk about Count Two, and you have two
12 instructions for Count Two. That is instructions 33 and 34,
13 and again this sets out the elements that you are required to
14 have in order to find anyone guilty in this case, and they
15 have to prove these elements beyond a reasonable doubt. Now
16 instruction number 33 says that "anything of pecuniary value
17 was received or promised or agreed to be paid as consideration
18 for the murder." Instruction 34 is an aiding and abetting,
19 and it says in order to be guilty of this, this element has to
20 be proved beyond a reasonable doubt, that they acted in a way
21 and purpose of causing or encouraging or aiding a murder for
22 hire for pecuniary gain. It refers back to this instruction
23 33, that there has to be something of pecuniary value received
24 or promised or agreed to.

25 I submit to you, ladies and gentlemen, that there is

1 no evidence of that. There is no evidence -- you know, even
2 if you take the Government's case at its best, there is no
3 evidence that Kathy Mock was offered any money or was given
4 any money or agreed to receive any money for the death of
5 Melvin Griesbauer. There is no evidence of that. Now I
6 understand because there is huge evidentiary gaps here, Mr.
7 Dittmeier has to make big jumps, and he has to ask you to take
8 big jumps and to speculate and to try to fill in these gaps in
9 the evidence because there is no evidence of that. But
10 neither here nor there, Kathy Mock did not commit this murder.

11 And this evidence is sort of uncontroverted, and
12 particularly the evidence uncontroverted was from Amanda Bax.
13 Amanda Bax just by circumstances was sharing a cell with Kay
14 Young. Amanda Bax tells us from Kay's own mouth who shot
15 Melvin Griesbauer. She shot Melvin Griesbauer. Remember she
16 is wearing that -- she sees Ms. Young wearing this bracelet,
17 and she realized she is a federal prisoner. She says, What
18 are you in here for. Murder. Federal murder? What, did you
19 kill the president? No, I shot my husband. And she also says
20 why. "I'd rather lose a husband than lose a farm." The third
21 thing she says is Kathy Mock is the fall guy. Now there is
22 nothing I can do for Amanda Bax. Amanda Bax is telling the
23 truth. She just happened to be in the same spot, you know, as
24 Kay Young in that jail. But you know what, Amanda Bax's
25 testimony is corroborated by the only piece of evidence I

1 introduced, and that is this exhibit, this note that was found
2 in Kay Young's truck at the time she was arrested. It says
3 "use her drugged state to convince her she shot him." Well,
4 that surely tells you, ladies and gentlemen, that if they've
5 got to try to convince Kathy that she shot him, the real
6 person that shot Melvin Griesbauer was Kay Young.

7 Now let's talk about some of the evidence that was
8 collected there at the scene and particularly the ski mask and
9 the gloves. One of the interesting things about the testimony
10 of the ski mask -- well first, this evidence was introduced by
11 the Government as to the farm, and this is the overhead of
12 this farm. Now one of the interesting things about this ski
13 mask and gloves is where it's found. And I said this in
14 opening statements. Of all the places that you can hide a ski
15 mask and gloves, to place it right by the house, that mask and
16 gloves was intended to be found, ladies and gentlemen. Each
17 of these buildings would have been anyplace you could hide
18 this ski mask and gloves. This is the inside of Kay Young's
19 house. You could hide that ski mask and gloves just about
20 anywhere on this farm, which would be a lot more difficult to
21 find. You know what was so interesting -- and again,
22 sometimes from time to time you hear a witness say something
23 that you don't anticipate. You know, generally I know
24 generally what everybody is going to say, but Lieutenant Hall
25 said it was so unusual to find this sitting out like this,

1 find a ski mask and gloves. Now it really never really made
2 much sense about the ski mask and gloves, and, in fact, it's
3 Jean Ballard who three years after this homicide, three years
4 after she is talked to by police, comes up with this Thomas
5 Ponder, you know, told her to wear gloves and a hat. That's
6 three years, three years that she's been blogging on this case
7 that she comes up with this.

8 But the ski mask I think is sort of interesting
9 because of everything that is sort of incidental to it.
10 Exhibit 31 was this receipt of how the ski mask was purchased.
11 And I have to tell you, I think what's sort of strange about
12 the ski mask -- I'm sorry, the interesting thing about the
13 purchase of the ski mask -- now get this. This is the
14 Government's theory. Again, there is no evidence of this, but
15 this is their theory that on her way up to commit the murder,
16 she buys a ski mask in order to commit the murder. Now there
17 is no evidence of that, but that is their theory. And what's
18 on this receipt? Again does this make sense that if you are
19 going to go up, you are going to plan on committing a murder,
20 well, I am going to stop at a Wal-Mart and I am going to buy a
21 couple CDs, some T-shirts, and a short sleeve shirt while I'm
22 there and buy a ski mask to commit a murder? That doesn't
23 make any sense.

24 Now the other thing about this receipt that doesn't
25 make any sense to me, if given that's the theory, is she keeps

1 it. You remember Lieutenant Hall does a search of her purse
2 on the 23rd. Weeks later or the following week when they do a
3 search warrant of Kathy Mock's home, they look in the purse
4 and they find the receipt. If you are going to buy a ski mask
5 in order to commit a murder, do you think you are going to
6 keep the receipt from it? I suspect, ladies and gentlemen,
7 what the evidence was was that Kay Young told her to buy a ski
8 mask on the way up, and that's why she bought it, and while
9 she was at Wal-Mart, she bought other stuff.

10 The evidence doesn't make any sense. Now the other
11 evidence as it relates to the ski mask is this DNA. All we
12 really know about the DNA is it was handled by Kathy Mock.
13 Well, if she purchased it, she probably handled it. That is
14 all there is to that DNA. The other interesting thing about
15 the DNA on the ski mask as well as on the gloves is there is
16 other people's DNA on it. And we don't know what's inside and
17 what's outside of either the gloves or the mask, but there is
18 other sources. There were other people's DNA on both the mask
19 and the gloves.

20 Now the gloves also had what they call gunshot
21 residue on it. Now Will Randle from the crime lab testified
22 about the gun residue. He said there was a minimal amount of
23 gun residue, but all the conclusions you can draw from that is
24 that you are either in proximity to where the gun was shot,
25 that you handled the weapon, or that someone who handled the

1 weapon touched the gloves. Those are the only conclusions
2 that you can make from that. You also remember the exhibit --
3 I was looking for this exhibit of the cartridge where they
4 separated the cartridge and they put, you know, the gunpowder
5 separate from the casing and the shell. Well, did you see how
6 much gunpowder was in there? There was one flake of unburnt
7 particle. That was all that was on there. And again, what
8 Will Randle testified to was that there is no way to know
9 where it came from, what gun it came from, how long it had
10 been there, and again it can be transferred. It doesn't mean
11 that you shot a gun. It just means that you maybe were around
12 where a gun was fired or it could have been that it was
13 transferred from the person who actually shot the gun onto the
14 glove. That is all that means. But what's sort of head
15 scratching about -- this is the exhibit I was referring to.
16 Look at all that gunpowder there, and we are talking about one
17 little flake. That is all that was found.

18 Now what's sort of a head scratcher about the gloves
19 is what you have to look at in this regard. Exhibit 34, which
20 is a stipulation about fingerprints, now the gun was tested
21 for fingerprints, right, and no fingerprints were found on the
22 gun. Now remember the testimony about the gun. The gun was
23 carried around by Kay Young and Melvin Griesbauer all the
24 time. I think Gayle Craigg said it was a traveler. It went
25 everywhere with them. Now are you telling me that not one

1 print was found on it? No prints? I think it's a reasonable
2 conclusion, ladies and gentlemen, is that gun was wiped down.
3 That is why there is no prints on it. Now if Kathy Mock was
4 wearing gloves and did this, why would the gun be wiped down?
5 Here's what we know about the shooting, what little
6 we know about the shooting, and it comes from Dr. Adelstein.
7 Dr. Adelstein can't tell us anything about the person that
8 actually shot the weapon, can't tell us how tall, how short,
9 what hand they are, what position they were in. They can't
10 tell us what position Melvin Griesbauer was in at the time he
11 was shot. He doesn't know anything about that. Now what he
12 did say is that he would estimate that the gun was anywhere
13 from 6 to 30 inches away based on the stippling, the tattooing
14 from the gunpowder. But he even said, you know, that is just
15 an estimate. We could really find out if we test fired the
16 weapon ourselves and figured out how far you'd get stippling
17 if we really want to know that, and he just threw that out as
18 an estimate. That is about all he said about the actual
19 shooting incident except for one other thing. He said who
20 used this gun is someone who knew how to use it. That is what
21 he said. He said the person who shot this gun in this
22 shooting incident had to know how to use it. That is an
23 important piece of information because it was clear that Kathy
24 Mock did not have any proficiency in weapons. We know that.
25 We know she had no proficiency in weapons. But Kay Young did.

1 She could shoot that dog from 200 yards away. I tell you,
2 ladies and gentlemen, instinctively what happened, what
3 probably happened, is Kay Young shot Melvin Griesbauer and
4 cocked it again, and that's why there was another round in
5 there.

6 Now I'm going to start -- I'm going to end here where
7 I started, and that is talking about oaths and commitments and
8 promises, and I realize what's difficult in this case in
9 looking at these instructions is there is a murder, but a
10 murder isn't enough. They have to prove more than there was
11 just a murder. They have to prove those elements that we
12 talked about, and that is going to be difficult for you
13 because of what I said earlier, because Melvin Griesbauer was
14 murdered and you are going to want to have somebody pay for
15 that. But you have to live by your oath as a juror in this
16 case. And considering this evidence, the other important
17 piece of evidence is the pills. The pills are important, and
18 why are the pills important? Well, they are probably for two
19 reasons. Either she is trying to kill Kathy off or she is
20 doing just what this note says, this note that's in her car
21 two years after the homicide. There is a reason why it's
22 there. Now it's important for you to look at all the evidence
23 in this case but particularly those pieces of evidence.

24 Now, ladies and gentlemen, I'm going to say it again,
25 oath, promise, commitments, these are things that we rely on.

1 Everyone in this courthouse that works in this courtroom, we
2 work on a word, your word. If you don't keep your word, then
3 anyone coming into this courthouse can't rely on our justice
4 system. You make a promise, you've got to keep it. You've
5 got to find Ms. Kathy Mock not guilty. I tell you, ladies and
6 gentlemen, all this, all of what we function in this
7 courthouse day in and day out is based on an oath that I take,
8 that Mr. Dittmeier takes, that the Court takes, witnesses
9 take, and you take. You've got to live up to your oath. When
10 I got married, I got a ring, and it said this represents the
11 love and fidelity to your wife. If I'm not faithful to my
12 wife, this ring means nothing, as this courtroom and all these
13 proceedings mean nothing if we don't keep our word. Keep your
14 word, ladies and gentlemen. Scrutinize this evidence, look at
15 these instructions, look at these elements. There is no
16 evidence to support these accusations. Find Kathy Mock not
17 guilty. Thank you.

18 THE COURT: Ms. Herndon.

19 MS. HERNDON: Can we take a little break? It's been
20 two hours.

21 THE COURT: We will take a brief recess during the
22 arguments at this time, ladies and gentlemen. Again, do not
23 discuss the case amongst yourselves or with anyone else. Do
24 not allow anyone to discuss it within your hearing or
25 presence. Do not form or express any opinions about the case

1 until it is given to you to decide.

2 (Court Recessed from 12:10 p.m. until 12:25 p.m.)

3 MS. HERNDON: Thank you, Judge. May it please the
4 Court. Ladies and gentlemen of the jury, first thing I want
5 to ask you to do when you go back into the jury room to make
6 your decision in this case is to remember the rules. It's not
7 enough that Kay Young could have killed her husband. It's not
8 enough that she might have killed her husband. What you have
9 promised to do is to hold the Government to a burden of
10 proving to you beyond a reasonable doubt that Kay Young was
11 involved in a conspiracy to kill her husband, that she was
12 involved in a murder for hire. And the judge read the
13 instructions to you. You will have them to take back there
14 with you and to look at, which this is what you will do as a
15 jury, you will go back there and you will all talk about it.
16 You will all talk about the evidence that you heard last week,
17 every bit of evidence that you heard. So let's go through the
18 evidence and see where reasonable doubt exists. Remember what
19 reasonable doubt is, a doubt, something that you would
20 hesitate to act upon as a reasonable person. Is there
21 evidence in this case that you would hesitate to act upon to
22 find Kay Young guilty of murdering her husband, of conspiring
23 to commit murder for hire? Well, let's look at what the
24 evidence is. Let's go through all of it.

25 Let's first talk about the physical evidence in this

1 case. What does the physical evidence in this case show you?
2 What does it tell you? It tells you that every single test
3 that was performed on every single piece of evidence that was
4 taken to the crime lab came back with Kay Young being
5 excluded. No matter what there was on the mask or the gloves
6 or the gun or anything else, the bag of pills, anything else
7 they took, if they found something, Kay Young was excluded as
8 a contributor. So what do we have? We have a ski mask that
9 has Kathy Mock's DNA on the inside of it and DNA contributed
10 from Mel Griesbauer on the outside of it. And how does that
11 fit with what happened here? It fits exactly with what you
12 have heard, that Kathy Mock who had the shoes that we see the
13 similar shoe print in the exact position, 6 to 30 inches away
14 from Mr. Griesbauer as the medical examiner testified,
15 shooting that gun with blood splatter coming back onto the
16 mask.

17 MR. MCGRAUGH: I will object, Your Honor. There is
18 no evidence that there was blood splattering on the mask.

19 THE COURT: Closing argument, let's proceed.

20 MS. HERNDON: What do we know about what that mask
21 had on it? A mixture of DNA. And so you as reasonable people
22 can draw reasonable inferences as to why Kathy Mock's DNA is
23 on the inside of that mask and Melvin Griesbauer's is on the
24 outside.

25 Now let's move on to the gloves. What do we see on

1 the gloves? On the inside, again the inside of the glove, we
2 see Kathy Mock, and on the outside of that glove, even if it
3 is just a little bit, we see something that came from the gun.
4 Does it mean that she fired the gun? No. As the expert
5 testified, it doesn't mean that she did. It means she could
6 have. But again, what is excluded? Kay Young. Yes, Mr.
7 McGraugh says there is a mixture on that glove, too, but don't
8 forget that in that mixture is not Kay Young. Excluded. The
9 physical evidence fits in line with just what I told you about
10 how this homicide happened. And we heard testimony about the
11 cartridge that was behind to the right. Most likely that's
12 how it would have ejected, completely consistent with where
13 Kathy Mock's shoe print was who had on the mask and the
14 gloves. And what happens to that mask and those gloves? It
15 ends up on the side of Kay Young's house. Why? Why does it
16 end up on the side of Kay Young's house? Because as Kathy
17 Mock is coming back to the house, that's where she throws it.
18 Mr. McGraugh wants to give some implication that she would
19 have hidden it somewhere else, but really let's think about
20 what happened here. After that shot is fired, she comes back
21 to the house. We know that because we know that is where she
22 is when Kay goes to get her. Who could have discarded that
23 there? Kathy Mock.

24 So let's move on and look at some more of the
25 evidence. Let's go from the physical evidence and look at the

1 statements that we have in the case. We've already talked a
2 lot about, and I won't go into detail, about the statements.
3 Let's start with Keri Ponder. What does Keri Ponder say? She
4 talks about some "they". "They are willing to pay 10,000."
5 She doesn't know who "they" are who are willing to pay
6 \$10,000. Not only does she say I did not take this seriously
7 at all, Kathy was always talking about hurting people, the
8 Government brings this into you as this huge monumental
9 evidence of a murder for hire, but there is a lot of problems
10 with this. There is a lot of problems with these statements.
11 Nobody takes them seriously. Keri Ponder told you she didn't
12 take it seriously, and even more problematic for their case
13 against Kay Young is there is no evidence at all that Kay
14 Young said this to Kathy Mock. No evidence. You have Keri
15 Ponder saying that Kathy Mock said this to her, but Keri
16 didn't hear Kay, and the Government didn't bring you anything
17 to even suggest that Kay knew Kathy made that statement. So
18 there is no evidence from Keri Ponder that Kay Young was
19 involved in a conspiracy to kill her husband for money. None
20 at all. Even if Kathy Mock was serious when she asked Keri
21 Ponder -- and that's an "even if" -- the Government has the
22 burden of proving to you that Kay Young was involved in this
23 conspiracy, and they have given you no evidence that Kay ever
24 knew Kathy made that statement and no evidence that that's
25 actually what Kay said to Kathy on the phone.

1 And the same goes with Thomas Ponder's statements,
2 and his statements are even more problematic because Thomas
3 Ponder is all over the place, perhaps because he was more
4 involved in this than he wants to admit as suggested by a
5 statement he may have made. I don't know, Jean Ballard says
6 he made it, and I don't know why Jean would lie about it. She
7 says he talks about telling his mom to wear a mask and gloves,
8 but we don't really know what Kathy Mock said to Thomas Ponder
9 because he told you -- he gave four different statements. He
10 is a meth addict. He really doesn't remember anything that
11 happened. In one of his statements, he kept insisting to the
12 officers that she asked me if I knew someone who would kill
13 someone, and I said no, and that was the end of it. So maybe
14 that is all that ever happened or maybe Kathy said to him it's
15 probably worth about \$10,000 or maybe Kathy said to him -- the
16 very worst case scenario for Kay Young -- Kathy said to him
17 Kay is willing to pay \$10,000. But what if Kathy did say that
18 to him? Again has the Government brought you any evidence
19 that Kay knows Kathy said that? Is there any connection
20 between those statements that are made to either Keri or
21 Thomas Ponder and Kay Young? None at all. None at all. We
22 have to rely on the Ponders saying what Kathy said saying what
23 Kay said, and that is certainly not evidence beyond a
24 reasonable doubt or any evidence at all that Kay Young was
25 involved in a conspiracy to murder her husband and to pay

1 someone to do it. And again, what does Thomas Ponder say?
2 Well, I said no, so no conspiracy has been developed there
3 after he said no.

4 Let's talk about Jean Ballard. What did Jean Ballard
5 say? More statements from Kathy Mock. Jean Ballard said that
6 when she is in the car with Kathy, she says to Kathy, Did Kay
7 kill her husband, and Kathy shook her head no, and she said,
8 Did you kill him, and Kathy said, I think so, but I don't
9 remember. Right out of Kathy Mock's own mouth, Did Kay kill
10 her husband. No. No. Now let's talk about the statements
11 that we heard out of Kay Young's -- that people directly heard
12 Kay Young say without Kathy being the middle man or the middle
13 woman in it all. Rita Ponder, what did Rita Ponder tell you?
14 When Mr. Dittmeier is going through his time line of how this
15 murder is evolving, remember that he left out Rita Ponder's
16 statements. What did Rita Ponder say when she went up to that
17 farm to sell dogs with Kathy? She said I heard Kathy and Kay
18 discussing the marriage was bad. She wanted to leave him, and
19 Kathy was talking about offering to help her move out. That
20 is what Rita Ponder said. So here when we finally have the
21 two people together, we can finally hear Kay and Kathy talking
22 without it coming through Keri or Thomas Ponder. What does
23 Rita Ponder hear? She hears I want to move out, I want to
24 leave him. That is what Kay is telling Kathy, and Kathy is
25 saying I will help you move out. Drastically different from

1 "I would like to hire someone to kill him and pay that person
2 money."

3 Tim Eschmann, what does Tim Eschmann say? He says,
4 you know, we were friends, we dated, we went out, not a maybe
5 typical relationship that you're thinking of. It wasn't a
6 physical relationship. I don't make a habit of dating married
7 women, but she told me that she was leaving her husband. She
8 told me that they had agreed to divorce. Right out of Kay
9 Young's mouth. So when we hear words coming -- that witnesses
10 heard out of Kay Young's mouth, we are hearing talking about
11 divorce, we have agreed to divorce, and I am leaving him, I
12 want away from him. Until, of course, we come to Amanda Bax.

13 Now let's talk a minute about Amanda Bax. Remember
14 Amanda Bax with her six felony convictions and her five
15 aliases? And why is that important to you? Because remember
16 what she said about her convictions. They all involved
17 deceit, fraud, representing something that is not true. That
18 is what she's been doing all of her life apparently with her
19 six felony convictions and her 12 years that she's racked up
20 for doing bad checks. She has set out to convince people she
21 is someone that she is not and to defraud people, and that is
22 what she came up and did here. Now how do you know that? How
23 do we know that Amanda Bax is not telling the truth? Well,
24 her story doesn't make any sense first of all. She talks
25 about Kay saying that Kathy and Mel were having some kind of

1 an affair. Where did that come from? Whoever suggested or
2 said that? Does it fit in with anything else that you have
3 ever heard in this case? Not at all. And then she talks
4 about how Kay would rather lose a husband than lose the farm.
5 Well, she wasn't losing the farm. Where did that come from?
6 She had just refinanced. She is not in danger of losing the
7 farm. She just closed on a new loan for the farm. It is not
8 an option between they are moving in for foreclosure if she
9 doesn't get rid of her husband. It doesn't at all fit with
10 the facts of what are happening here.

11 And the last thing about Amanda Bax I want you to
12 remember is what she said when she was being asked about what
13 she might get out of this. She wants you to think that from
14 the goodness of my heart, I am coming in here and I am telling
15 you what I heard. But what do we know? We know she is not at
16 all acting out of the goodness of her heart because she
17 said -- well, when she was asked about if this is going to
18 help her get early parole, "Well, I have to do 40 percent of
19 my time by statute." Well now that certainly wasn't an answer
20 to the question at all because she wanted to avoid the
21 question, and she wanted to say to you, Well, I don't really
22 know, my attorney is going to be up with me at the parole
23 board, and I don't really know what he is going to say. So
24 she wants you to believe that she is going to come in here and
25 testify to try to put someone in prison for murder and she is

1 not going to bring that up to the parole board. That doesn't
2 even make sense. It would have been much more credible and
3 believable for her to say, yes, it will be great if I can get
4 some time off my sentence. It will be great if they let me
5 out after 40 percent and not 60 or 80 or 100, and I am going
6 to tell the parole board that I did a good thing here, but I
7 am still telling the truth. But she didn't take that
8 approach. She tried to avoid it and circle around it and not
9 answer it because she is not a truthful person. You can't
10 believe what she says based on what she said, what her record
11 is, what her convictions are for, and the fact that her story
12 made no sense.

13 Now the other person that you heard talk about what
14 Kay Young had said to him is Kris Robins. Kris Robins says,
15 yeah, every time we went to Columbia on these trips together
16 to Columbia, she would say to me how she would like to see him
17 dead. And then what did he say just voluntarily, just not me
18 trying to squeeze it out of him or get him to do anything
19 other than what was in his head, "Well, you hear that all the
20 time." You hear that all the time. He didn't take it
21 serious. He didn't call the police. He didn't do anything
22 about it. He didn't do anything about it until the police,
23 law enforcement, come to him and say, Hey, we have got this
24 little chat transcript here from you talking with Kay Young.
25 And what did he say to me? He said, You know, I didn't even

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1 remember that. I don't know if there was conversation before
2 this, probably, or after this, I don't know, probably. I
3 didn't even remember what was on the paper until they brought
4 it -- until they showed me what was on the paper.

5 And so the Government wants to come in here and show
6 this to you, and this "I have kept quiet" all of a sudden
7 means Kris Robins has kept quiet about the fact that Elain
8 Young was saying I wish he was dead. But if you look at that,
9 which is in evidence, if you look at that conversation, after
10 he says "I have kept quiet", what does she say? Kay Young's
11 response to him is "you have lost me," and then they go on to
12 just continue talking about hooking up. What's going on? Use
13 your reasonable common sense here to think about what is going
14 on. What does "I have kept quiet" mean? Kris Robins and Kay
15 Young are having an affair outside of her relationship with
16 Jim Goodwin. Remember that? Remember how Jim Goodwin found
17 that chat and it ruined his world basically? He broke up with
18 Kay Young after that. So reasonably don't you think Kris
19 Robins is saying I have kept quiet meaning I haven't let your
20 boyfriend know we are seeing each other? In the context of
21 what is happening and what Kris Robins told you and the
22 conversation in that chat, it makes a lot more sense than what
23 the Government wants to bring in to you as this Kay Young
24 saying I wish he was dead that Kris Robins took so seriously
25 because he hears it all the time.

1 The statements that have been brought to you in this
2 case are either statements that Elain Young had no knowledge
3 of, the Government has no evidence that she has knowledge of
4 them, or are statements of her real intent, which was to leave
5 him, divorce him, or statements that cannot be trusted, that
6 cannot be believed, and the testimony of Amanda Bax can't be
7 believed, and the testimony of Kris Robins "I have kept quiet"
8 is not what the Government wants you to think it is, and you
9 as reasonable people can figure that out.

10 So let's move on down to talking about what was going
11 on in Kay Young's life at the time that this homicide happened
12 because that is the Government's whole theory about what the
13 motive behind this was. The insurance, the insurance, the
14 insurance. We have heard all about the insurance, but look at
15 those insurance policies and remember what you have heard
16 about those insurance policies. That is not Kay Young running
17 out and taking more life insurance than she could ever need
18 out on her husband. He is in the military. He is being
19 deployed. He is going to Iraq. There was absolutely no
20 evidence that there was anything improper about those
21 insurance policies. Gayle Craigg told you on the one policy
22 that she was present when he got it. Everybody was there. It
23 was a little insurance affair before they were deployed. He
24 is going to Iraq, a better than even chance that he won't come
25 back as compared to just driving down to Cargill and doing

1 some work, and the Government hasn't given you any evidence
2 that there was anything unusual about those insurance
3 policies, that Kay in any way influenced her husband to take
4 those out. The only one she took out was the little one that
5 she got at school, that she got through work, and that was an
6 accidental death policy.

7 And if you think for a minute that Kay Young was
8 trying to make what happened to her husband look like an
9 accident when she really did it, then think again about what
10 the evidence is because everybody wants to get up and shout
11 and holler about how much she knew about guns and she could
12 use a gun and she used it to take care of those varmints and
13 all other kinds of things around the farm and she was good at
14 it. So is the woman who wants to collect on her accidental
15 death policy going to go and shoot the guy and then cock the
16 gun again? It doesn't even make sense. This woman who
17 carries a gun all around and knows about the gun is going to
18 set him up for an accident by cocking the gun after he is shot
19 and instantly killed? It doesn't even make sense. Throwing
20 up insurance and saying, yeah, this is the stuff that the
21 movies are made of, woman kills her husband for the insurance,
22 the problem in this case is the Government has given you no
23 tie at all between this insurance and the murder. None at
24 all. Now they have said to you, well, she needs the insurance
25 money to pay for the murder. That's what they say sometimes

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1 anyway. She is going to collect on the insurance and pay for
2 the murder, but sometimes they tell you that she needs the
3 loan to pay for the murder because we have got that
4 10,000-dollar figure floating around there sometimes. Keri
5 Ponder said 6,000; Thomas Ponder said 10,000. Of course, we
6 know the problem with that is there is no evidence that Kay
7 Young even knew Kathy Mock was throwing out this 10,000-dollar
8 number.

9 So, yeah, was it a coincidence that Kathy Mock threw
10 out a 10,000-dollar number and Kay Young wanted to come out of
11 her loan with \$10,000? Now if the figure had been \$6,587,
12 then maybe you couldn't call that a coincidence, but \$10,000
13 is a pretty round number, and since there is no connection
14 between the \$10,800 that Kay Young ended up with and the
15 \$10,000 that Kathy supposedly mentioned to Thomas Ponder
16 maybe, if that discussion even occurred, then we are left with
17 way more than reasonable doubt here.

18 Well, the Government says Kay Young was broke. She
19 was desperate. She had to have this insurance money. But the
20 evidence shows you otherwise. What does this whole loan thing
21 show you? She had this debt resolution thing with Arbitronix.
22 The restructuring of the loan was redoing the farm loan,
23 paying off all the debt from Arbitronix, and leaving her with
24 \$10,800. She was far from desperate. This was wiping out her
25 debt and leaving her some money after that. And what did

1 Gayle Craigg tell you about the dogs she had? She was a dog
2 breeder. You saw the kennel. This isn't somebody who's got a
3 couple dogs in their kitchen that they're hoping to sell.
4 She's got a huge kennel out there, and depending on what the
5 dogs sold for, she had between 20,000 and \$91,000 worth of
6 dogs out there plus, as Gayle Craigg told you, two male dogs
7 who she could breed -- who are valuable to breed more litters
8 with. So this whole motive of she was desperate for money and
9 had to kill him to get the life insurance is simply not
10 supported by the Government's own evidence.

11 Now let's move on to talk about what Kathy Mock and
12 Kay Young did on the evening of the homicide because you can
13 take a lot from -- the Government is telling you that within
14 40 days of being married -- now remember, that is not 40 days
15 of knowing each other, but within 40 days of being married,
16 Kay Young is on her husband's life insurance policy. And what
17 does that mean? That means that she is setting him up to kill
18 him already then. But what happens after he dies, what does
19 she do? During the 911 call, she can't even talk. She is
20 over by the side of the fence vomiting. The police come and
21 Salsberry tells you she couldn't talk, I was talking to Kathy
22 Mock. Kathy is on the 911 call. Kathy is talking to the
23 police when they get there because Kay can't even speak. And
24 what does Gayle Craigg tell you? For months after that when
25 she first saw her, she was like a walking zombie, and for

1 months after that, she was so affected by her husband's death
2 that she couldn't spend the night alone. And this is the same
3 woman that from almost the beginning of their marriage was
4 plotting his death? It just doesn't add up. And that is
5 contrasted to Kathy Mock who is the one who is doing the
6 talking, who is the one who is throwing the mask and gloves on
7 the side of the house. It just doesn't add up if you look at
8 what Kay Young was by all reports her demeanor and her actions
9 that night and the months after that.

10 Now let's talk just briefly about this other -- the
11 Government knows they can't prove this case to you, and so
12 they are going put on these other people. They are going to
13 put on Normane Newlin. They're going to put on Jim Goodwin.
14 Now you saw Normane Newlin up here. You saw his credibility
15 as he came up. And remember, the thing to remember about
16 Normane Newlin is he has a grudge. He has an ax to grind.
17 Remember how Kay Young testified against him in a proceeding
18 that meant a lot to him. And he is going to come up here and
19 tell you a story that, really, this thing about the man with
20 the insurance papers and then he lost the insurance papers and
21 oh, no, he really tore them up. Mr. Dittmeier and I agree
22 about one thing, judge Normane Newlin's credibility. Remember
23 what Jeff Dodson said, reputation for being untruthful. And
24 also remember this, remember this when it comes to Normane
25 Newlin and to Jim Goodwin. Did anyone else ever end up dead?

1 Normane Newlin said no, I am not going to do this. David
2 Crawford, does she go try to find somebody else to kill him?
3 Does anyone ever try to kill him? Does he ever end up dead?
4 Jim Goodwin, is there any evidence at all that Kay Young tried
5 to do anything to him? This whole thing about the pills she
6 gave him when he wanted an erection is a complete red herring.
7 They were given to him before she was put on his insurance
8 policy. Is there any evidence that after she was put on his
9 insurance policy she tried to kill him or do anything to him?

10 The only thing the Government is trying to do by
11 bringing these witnesses to you is to say Kay Young has bad
12 character. She cheats on her husbands. She messes around.
13 But remember the Adult Friend Finder thing. Look at that
14 exhibit. What's going on there? She is paying Adult Friend
15 Finder every month out of her and her husband's joint bank
16 account. Just like Tim Eschmann told you, there is no hiding
17 here. There is nothing -- it's a marriage of convenience, for
18 her to stay on his insurance until they get past that and the
19 marriage ends.

20 The Government has made some fatal assumptions here,
21 ladies and gentlemen. They have assumed that Kay Young knew
22 about the statements Kathy Mock made. They have assumed that
23 Kay Young gave Kathy these pills because she is a nurse and
24 she would have access to them. Where was the evidence of
25 that? You have to make huge leaps, huge leaps. They have

1 assumed that Kay Young at some point promised Kathy Mock money
2 or something if she would kill her husband. Where is the
3 evidence of that? It simply doesn't exist. It doesn't add
4 up. There is reasonable doubt written all over this case.
5 Don't let all the things the Government has thrown in here to
6 you take your eye off what the jury instructions say because
7 none of these things prove the elements that the Government
8 has to prove in the jury instructions. The fact is, Kay Young
9 was a victim in this case, and the Government has not shown to
10 you beyond a reasonable doubt anything different, and for that
11 reason we ask you to find Kay Young not guilty on both counts
12 when you go back to the jury room. Thank you.

13 THE COURT: Mr. Dittmeier, you have 15 minutes for
14 rebuttal.

15 MR. DITTMEIER: Kay Young is a victim in this case?
16 She is sitting right over there. She doesn't look like Mel
17 Griesbauer did on the morning of March 23rd, does she? I
18 don't call that a victim. And, ladies and gentlemen, when Ms.
19 Herndon just finished up and said, Well, the Government put in
20 just a lot of stuff here, you know what that stuff is called?
21 It's called evidence. Evidence. It don't come in if it's not
22 evidence, and every bit of it goes to Kay Young's guilt, every
23 bit of it goes to Mock's guilt.

24 Now do you remember me telling you do you remember
25 the evidence if I say something different than what you

1 remember or whatever? Let me show you what lawyers do, and
2 you saw a good example of it up here with both of them. Ms.
3 Herndon just told you about these dogs. She didn't have any
4 financial problems. She had all these dogs in the kennel. No
5 financial problems, okay? Well, it sounds pretty good except
6 on March the 13th, and you saw this, she sends an e-mail to
7 Lessing saying "my paycheck is stretched very thin, I simply
8 cannot stretch myself any further and survive the month." Why
9 didn't she sell a dog if it's that easy. She may have still
10 owed money on those dogs or on the kennel, we don't know. But
11 on paper, her e-mail, pnurse_kate, "I am stretched so thin I
12 can't survive the month." But Ms. Herndon gets up here and
13 tries to say, well, she was financially okay, she didn't need
14 that.

15 Here is another thing when she says Elain Young "you
16 have me lost" like she doesn't understand when he was saying I
17 was thinking about your cervix, and I have kept my mouth shut,
18 you better come over here. Take a look at this. "Just
19 thinking about that cervix", okay. "Expect you to be here
20 when I tell you, too." He is giving her an order. And then
21 "how soon can you be here." She goes, "You have me lost. Are
22 you drinking. Oh, there you are. Do you have a minute."
23 What do you think, ladies and gentlemen? Something happened
24 on the chatter coming through, "oh, there you are." She
25 wasn't saying I am lost, I don't know what you are saying.

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1 And if for a second she didn't know what he was saying, do you
2 think she would have left her home after 9:00 at night and
3 went to his house, then knocking on the door, taking orders
4 from Robins? You saw him there. Going over there to give him
5 sex because he kept his mouth shut.

6 And here is another thing. Every witness says, well,
7 I didn't take them serious. I didn't take them serious.
8 Well, Keri Ponder on the 16th took it serious enough to tell
9 Jean Ballard, didn't she? Thomas Ponder took it serious
10 enough when he told Rita Ponder she went up to Novinger and
11 she was asking me to kill somebody for \$10,000. They all
12 thought it was significant. And Kris Robins thought it was
13 significant to hold it over her head to say "I have kept my
14 mouth shut." And we can say they didn't take it serious, but
15 they all took it serious to that point.

16 Now the other thing both attorneys did, Kathy Mock
17 went to Thomas Ponder and offered him \$10,000, went to Keri
18 Ponder, that is no conspiracy. Ladies and gentlemen, under
19 the instructions, the conspiracy we are talking about is
20 between Kathy Mock and Young. That's the conspiracy we are
21 talking about. When Young tells Amanda Bax that Mock was
22 trying to find somebody to kill him for her, that's your
23 conspiracy, ladies and gentlemen, and that's exactly what Mock
24 was doing, and she confirms to Bax that she knew she was doing
25 it. And sure, of course, you have to be careful with Bax, but

1 Bax didn't make that up. How would Bax know she had a farm?
2 How would Bax know she had the farm in her family for a long
3 time? How would Bax know that Young's husband had a million
4 dollars of insurance on him if Young hadn't told her? Do any
5 of you know how much insurance I've got on myself or any of
6 you know how much insurance the one next to you has got? No.
7 Young told her she had a million dollars of insurance, and it
8 was in the context of talking why she was in the penitentiary.
9 Bax said she said that she had Kathy Mock trying to find
10 somebody to kill him. Well, Mock went to Keri Ponder and
11 Thomas Ponder. How would Bax know that if Young didn't tell
12 her? She would have no way. We are talking about several
13 years after the crime. So right down the line it fits. They
14 were in this together. They planned it together. It's that
15 simple.

16 And both of them are actors. You heard the 911 call
17 and the wailing and whatever on it. That was an act, ladies
18 and gentlemen. Do you recall when Trooper Berry pulled Young
19 over when he arrested her for murder, and he walked up and
20 said, You are under arrest for murder. What did Young say?
21 "Murder, who"? And she's got a note in her purse relating to
22 her husband's murder. But if you would have seen that in a
23 vacuum and not knowing the rest of this evidence, you would
24 have thought that poor lady is baffled. She was so cool,
25 "murder, who". Well, that is the same thing that's gone

1 through this whole thing.

2 And they were acting in lock-step. You can just see
3 that. Ms. Herndon has implied that Kathy Mock came up there
4 and did this murder by herself. Well, think about it. Young
5 tells Leonard Clark that she heard the shot, went upstairs,
6 and got Kathy Mock out of bed. Well, if Mock did this murder
7 by herself, she couldn't have gone up the steps and got her
8 out of bed. She would have been up by the barn. She heard
9 the shot and then she went right up there. That's her story.
10 And they have got the same story. They are covering for one
11 another. That is what a conspiracy is all about. So we can
12 twist the words, we can do what we want. For instance,
13 Ms. Herndon gets up here and says the Government is acting
14 like she took every piece of insurance out for the murder.
15 The insurance is a motive. We have never presented that she
16 took any of that insurance out herself. And incidentally, Ms.
17 Herndon got up here and said, you know, they got married on
18 September 5th and she took this insurance out. Well, that is
19 true she took more insurance out, but you remember the
20 evidence. She'd already had insurance before that. She had
21 insurance on him, was a beneficiary, six months after they
22 met. It wasn't after they were married. She was on there
23 before that.

24 So, ladies and gentlemen, you have heard the evidence
25 in this case. And, you know, Mr. McGraugh says that Kathy

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1 Mock, there is no evidence. Well, what did she do? She went
2 to two people on behalf of Kay Young to solicit them to commit
3 this murder. She drove up there for the murder. Do you think
4 it's just a coincidence that out of all the Wednesdays in the
5 world, she happened to drive up to Novinger and Melvin
6 Griesbauer is going to get killed at 2:00 that morning? She
7 specifically went up there for the murder, and she went up
8 there to do the murder with Kay Young. She bought the mask.
9 The mask is wrapped around the gloves. And, you know, we
10 talked about you see CSI and all the shows, and you have to
11 realize those are movie shows, but do you realize what Mr.
12 McGraugh was saying. There was only one particle of gunpowder
13 on there. That would be like saying we found one hair and it
14 belongs to somebody, but they have got a whole head of hair,
15 so they weren't here. There was one particle on there, but
16 it's outside, and it's wrapped up in a mask that was bought
17 that afternoon. It's all contemporaneous. It happened at the
18 same time.

19 But here is another thing. There is no question
20 Kathy Mock went up there to participate in this murder. She
21 bought the ski mask. Her DNA is on the mask. Her DNA are on
22 the gloves. The gunshot particle is there. But she wasn't
23 going to go up there without a weapon. How would she know --
24 you are going to go up there and do this murder and you have
25 no weapon? What was he killed with? He was killed with Kay

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1 Young's rifle, which was kept in the barn sometimes. Wouldn't
2 that be something for Mock to go up there to do the murder by
3 herself and she go, I have put all this effort into it and now
4 I don't know where the gun is? It was Kay Young's gun. And
5 as far as Mock's footsteps around the body, you know Kay
6 Young's footprints were there, too, because she told Leonard
7 Clark she checked his pulse. They were up there by the body.
8 There is just no question about that.

9 And this business about the gun being cocked, there
10 is two explanations. They shoot him, and just like a pump gun
11 or a lever action, you shoot and just reflexively you cock it
12 and it hammers back, that is the one explanation, and then
13 they just set it down, and with their adrenaline pumping
14 because nobody said they kill people every day, their
15 adrenaline was going to be pumping, it was a glitch that they
16 missed. The other explanation is that they planned this out.
17 They are so focused on killing him, they are so focused on
18 their stories about going up and getting Mock out of bed and
19 then would say he'd run around with the hammer back all the
20 time, that they just missed the forest for the trees and it
21 never registered that somebody would take a look at that and
22 go how. They just got too close to it, okay? But the fact
23 is, they are both there. They are both standing by the body.
24 They both tell the same story about Mock up in bed. They
25 can't tell that same story if they are not in it together.

1 So, ladies and gentlemen, use your common sense.
2 Mock's got her DNA on the mask and the powder. It's Young's
3 gun that is used. Young has said that she would like to kill
4 the sonofabitch to Kris Robins. She's had affairs from the
5 day they meet. She is going to inherit a million dollars.
6 Mock is telling Jean Ballard I am going to come into some
7 money pretty soon, and I will pay you, and I will have extra
8 money left. It is just right down the line, ladies and
9 gentlemen. They just they killed this poor man. He came home
10 from work that day and just didn't have a clue what was going
11 to happen up there. Mock could have been waiting up in the
12 barn for him, and Young could have drove him up there.
13 Remember when we selected the jury, I said you might not know
14 exactly who pulled the trigger, there is certain things, but
15 when we went through the essential elements that the
16 Government has to prove beyond a reasonable doubt, we have
17 proved every one of them.

18 And don't forget Melvin Griesbauer in this case
19 because he is the victim. Mock's not a victim. Young's not a
20 victim. And they talk about Mock being so drug induced. When
21 she was on that phone and when she was talking to Salsberry,
22 nobody said she was drug induced then. That was part of the
23 game. Once the wheels came off, she got back to Jean
24 Ballard's house and took those pills because they knew they
25 were going to have to change their game plan because it was

1 closing in on them. That mask and gloves should have never
2 been found because it should have been taken as an accident
3 and it stayed up at the barn and that would have been the end
4 of it. You have a traffic accident on a corner, you don't
5 have the police looking around back in the alleys and whatever
6 for a gun. So it's just the wheels came off of it. They made
7 some mistakes. But you have got Mock asking people when she
8 has no money, but she'll get money if you kill Mel Griesbauer.
9 She has no motive to kill Griesbauer except what she is going
10 to gain from Young. Remember, they cherish their time
11 together. They are tight. Well, Mock knows she is going to
12 get some money because she told Jean Ballard she is going to
13 be coming into some money.

14 So, ladies and gentlemen, use your common sense in
15 this case. Follow the evidence to its logical conclusion, and
16 you can only conclude one thing, that they conspired and that
17 they killed him. And, you know, this 10,000 she talks about
18 being a round number. Well, it is interesting that she says
19 Normane Newlin says Kay Young told him \$10,000 on top of
20 killing his wife, and he says that on the Monday after the
21 murder. He had no idea that she was adamant about getting
22 10,000 left over after the loan. He had no idea that Thomas
23 Ponder was offered 10,000. At some point, it quits becoming a
24 coincidence and it's fact. And if you follow this logically,
25 ladies and gentlemen, you can't reach any conclusion other

1 than they cold bloodedly executed this Melvin Griesbauer.
2 When he walked up to that barn, he was a dead man walking, and
3 he was dead like that when they shot him, and then they went
4 into their staged act. And as early as March the 29th after
5 her husband is killed in her backyard, she is on the telephone
6 with the insurance company trying to collect that insurance.
7 And within a month, she is hooked up with another guy, and she
8 is bleeding him for money. And she's the victim? I don't
9 think so.

10 Ladies and gentlemen, you have heard this evidence.
11 You have taken an oath, and you know what you have to do.
12 Thank you.

13 THE COURT: Will you swear in the CSO, madam clerk.

14 (CSO sworn)

15 THE COURT: Ladies and gentlemen, if you will go back
16 with the CSO and Carrie. Ms. Cosgrove and Mr. Curry, you can
17 get your personal effects and your lunches, but then you have
18 to leave the jury room and bring those with you, all right?
19 We will be in recess.

20 (JURY OUT AT 1:08 P.M.)

21 (A Bench Conference Was Held On the Record and Outside of the
22 Hearing and Presence of the Jury As Follows:)

23 MR. REILLY: Judge, the Government just wants to
24 supplement a record on the composition of the jury. This is
25 related to the Batson challenge that we probably should have

1 asked the Court to note at the time, but as to the actual
2 composition of the jury that was seated, based on my
3 observations, there are five juror panel members who appear to
4 be African American. That would be number one, Johnson,
5 number 5, Ransom, number 8, Mr. Hamer, number 10, Ms. Cobbs,
6 and number 11, Ms. Perry. We didn't make that record at the
7 time of the Batson challenge, but just so there is something
8 to preserve the composition of the jury. In addition to that,
9 the defense between the two of them, I think according to my
10 recollection, struck three venire panel members who appear to
11 be African American males, number 10, Mr. Jackson, number 14,
12 Mr. Wince, and number 24, Mr. Martin. Just for the record I
13 note that.

14 THE COURT: Very well. Okay. Thank you, fellas.

15 **(Court Recessed from 1:10 p.m. until 4:00 p.m.)**

16 THE COURT: All right. We have received several
17 questions from the jury around 3:35. The first of which is,
18 Can we see a bank statement on Young and Mock. Second, Can we
19 see the note found in Young's car. Three, The coroner's
20 report as to what caused the zipper mark on the victim's face.
21 So as to question number one?

22 MR. MCGRAUGH: I don't think there are bank
23 statements. There were never any bank statements entered into
24 evidence, were there?

25 MR. REILLY: Yeah, there actually was.

1 Government's 31C is Mock's bank statement as long as your
2 records reflected that they were admitted and then the bank
3 records of Kay Young came in as business records.

4 THE COURT: Was that the loan stuff or the...

5 MR. REILLY: Mock was Security Bank.

6 MR. GORLA: Mock's came in for the mask to show that
7 the mask was paid out of the account.

8 THE COURT: Right, right, yeah.

9 MR. REILLY: We didn't go through the entire bank
10 statement, but we touched on the withdrawal. That's all we
11 touched on. And then on Young's --

12 THE COURT: Because it was a debit card at the
13 Wal-Mart purchase.

14 MR. CURRAN: Yeah, they linked it to the purchase.

15 MR. GORLA: And Young, they linked it to the Adult
16 Friend Finder bill.

17 THE COURT: Right, but that's it?

18 MR. GORLA: That's it.

19 MR. DITTMEIER: They are not complete bank
20 statements.

21 THE COURT: See and I interpret the question as
22 looking for something else other than that because -- but
23 maybe I'm wrong -- because those don't really say anything one
24 way or another. Those aren't really disputed as to what
25 happened with those transactions or whether they happened or

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1 not. So if that's all the bank records we've got, that's all
2 the bank records they get for what it's worth. So it was 31C
3 and what was the number on the other one, Michael?

4 MR. REILLY: Judge, the other one was 32B, Judge.

5 THE COURT: All right. So 31C and 32B?

6 MR. GORLA: Is 32B for the Adult Friend Finder?

7 MR. MCGRAUGH: 32B was related to the Adult Friend
8 Finder. Now there was a big stack of records. It was like
9 600 pages of bank records, but the only thing that we talked
10 about were the Friend Finder withdrawals. Just like with 31C
11 is, you know, 116 pages of bank records, but the only thing we
12 touched on was her debit card agreement and the debit card
13 statement from April -- from the March 22nd purchase of the
14 ski mask.

15 MR. GORLA: That's all that they get.

16 THE COURT: Yep.

17 MR. REILLY: I'm going to go get the Bank of America
18 records -- or the U.S. Bank records. That's 32C -- or 32B. I
19 left that in the office, so I will go get that.

20 MR. CURRAN: That note is in my office, the note that
21 they are talking that was seized.

22 THE COURT: Oh, the note found in Young's car with
23 the book. Okay.

24 MR. CURRAN: I will be quicker than I was the first
25 time getting over here. I will run over and get it if that's

1 all right.

2 THE COURT: Before you go do that, what about the
3 coroner's report as to what caused the zipper mark on the
4 victim's face?

5 MR. GORLA: It's not in evidence.

6 THE COURT: It's not in evidence, yeah, so...

7 MR. CURRAN: So you are free to speculate.

8 MR. MCGRAUGH: I think what he did was he said I was
9 wrong about the -- but that was the only reference to the mark
10 on his face. There was no report ever put into evidence.

11 MR. GORLA: Say it was caused by the zipper.

12 MR. DITTMEIER: You know, Judge, for the record, I
13 think I'd object to any bank records going back there because
14 they are so disjointed. I mean, I don't know what the jury is
15 looking for. Unless they are more pointed of what they want
16 out of bank records, if they get this, it is going to make no
17 sense. You put them in for the record, but as far as what the
18 jury would be looking for, I don't see anything coming out of
19 them, and I would object to them going back there unless they
20 are specific in what they want.

21 THE COURT: Yeah, and I don't know what specific
22 records they are looking for. You know, as you indicated, all
23 the records were admitted, but the only thing that anybody
24 ever talked about was, you know, the debit card and the
25 transaction with respect to the mask and the transaction or

1 payment for the Friend Finder thing.

2 MR. DITTMEIER: There is no time frames. There is
3 nothing.

4 THE COURT: Do you object to those going back, those
5 two or three pieces from those exhibits?

6 MR. DITTMEIER: No, if there are two or three pieces,
7 I have no objection to that.

8 MR. GORLA: Yeah, that's all. That's what we talked
9 about.

10 MR. MCGRAUGH: I think that probably should go back,
11 Judge.

12 THE COURT: Okay. And then as to -- and Kevin Curran
13 has gone to retrieve the copy of the copy of the note that is
14 referred in number two. And then as to the coroner's report,
15 standard stock response "be governed by the evidence as you
16 recall it and the instructions of law given to you."

17 MR. MCGRAUGH: Will you respond specifically to each
18 question, Judge, so they will know?

19 THE COURT: No, only to three. And then the response
20 to 1 and 2 is the actual -- is the response of giving it to
21 them. And for the record, the note from the jury is signed by
22 Maurice Johnson.

23 MR. DITTMEIER: Judge, my suggestion would be "you
24 are to be guided by the evidence." I don't see that they are
25 going to find that there is anything that is going to help

1 either side in those bank records other than... .

2 THE COURT: Other than?

3 MR. DITTMEIER: Nothing.

4 MS. HERNDON: Well, let me look and see. What will
5 they get?

6 MR. REILLY: If we just go with the pages we touched
7 on, those are the two pages that we touched on with Mock, and
8 then these are the pages that they alluded to with the Friend
9 Finder withdrawals from July through November.

10 MS. HERNDON: Yeah, I mean, I don't have any problem
11 with them not going back. We decided that they don't get
12 them.

13 THE COURT: Okay. So they don't get those bank
14 records. What about the note, are we sending the note back?

15 MR. CURRAN: Well, it's in evidence. We used it at
16 closing. Judge, it was the whole defense case.

17 MS. HERNDON: It's the only thing they introduced.

18 MR. CURRAN: Is that not much to ask, Judge?

19 **(Court Recessed from 4:20 p.m. until 5:50 p.m.)**

20 THE COURT: You may be seated. I think as of 5:14, I
21 received a note indicating signed by Mr. Johnson whom I am
22 going to assume is the foreperson that they reached a verdict,
23 okay? So unless anybody has any questions or concerns, I'm
24 going to have Carrie bring them out and see where we are, all
25 right? In that regard, for those that are sitting in the

1 gallery, please no outbursts of any kind one way or another.

2 (JURY IN AT 5:50 P.M.)

3 THE COURT: Will the foreperson please rise.

4 Mr. Johnson, has the jury reached verdicts in this case?

5 JUROR: We have, Your Honor.

6 THE COURT: Would you hand the paperwork to the
7 clerk. Will the defendants please rise. Will the jury please
8 rise. Madam clerk, will you read the verdicts.

9 THE CLERK: In the case of the United States of
10 America versus Katherine Mock and Elain Kay Young, Count One,
11 we, the jury, find the defendant, Elain Kay Young, guilty of
12 the crime charged in Count One of the indictment. Count Two,
13 we, the jury, find the defendant, Elain Kay Young, guilty of
14 the crime charged in Count Two of the indictment. Count One,
15 we, the jury, find the defendant, Katherine Mock, guilty of
16 the crime charged in Count One of the indictment. We, the
17 jury, find the defendant, Katherine Mock, guilty of the crime
18 charged in Count Two of the indictment.

19 THE COURT: Ladies and gentlemen of the jury, you may
20 be seated. The defendants may be seated. Counsel, do you
21 wish to have the jury polled?

22 MR. CURRAN: Yes, Your Honor.

23 THE COURT: Madam clerk, will you poll the jury.

24 (Jury polled)

25 THE CLERK: The verdict is unanimous.

1 THE COURT: Thank you, madam clerk. Ladies and
2 gentlemen of the jury, the verdicts that you have returned
3 will be accepted by the Court in this matter, and those
4 verdicts will act as the closure, the judgment, that will
5 close these matters that is the dispute between the United
6 States of America and the defendants, Mock and Young. Having
7 accepted your verdicts in this case, you will be released from
8 the admonitions that I gave you regarding the trial over the
9 last week or so, and you are free to discuss it or not discuss
10 it. It's entirely up to you. I do recommend, however, that
11 with regard to the thing that I told you about websites, that
12 it would be a wise course not to utilize any social sites that
13 you might have to make posts regarding the trial or your
14 conclusions or statements or experiences regarding the trial.
15 My recommendation to you.

16 Having discharged you from any further service in
17 this case and relieved you of any admonition, I also want to
18 take this opportunity to personally thank you as a member of
19 the Eastern District Court here in Missouri, the federal
20 district court, and to thank you also on behalf of my
21 colleagues, the other federal district court judges and
22 magistrates here in the Eastern District of Missouri, for your
23 service as well as thank you on behalf of the lawyers
24 representing the Government and the defendants in this case
25 and the defendants also. We know from our experiences in the

1 justice system that participating in jury duty sometimes is a
2 difficult experience for citizens. Sometimes you don't want
3 to participate. Sometimes it takes you away from your jobs,
4 from your families, from your homes, from the things in life
5 that you might just consider just fun. It's an awesome duty.
6 It's an awesome experience, but we hope that you understand
7 and appreciate the fact that without you, each and every one
8 of you, our system of justice would fail.

9 The Constitution, the founders of the Constitution,
10 designed it so that citizens would make decisions just as they
11 designed it so that citizens would make the decisions
12 regarding government regarding their governance. The justice
13 system, courts, are an integral part of our system, our
14 uniquely American system, and without your participation in
15 it, we wouldn't be unique, we wouldn't have justice, and it
16 would fail. So if we inconvenienced you, we apologize, but
17 hope that you understand its importance. If it was a
18 difficult decision for you to participate in jury duty, we
19 apologize for that, too, but we know you understand that it
20 was important. If it caused you to wrack your minds, your
21 consciences, and your souls, well, we can't apologize for that
22 because that is what it is supposed to do. That is what makes
23 it work. That is what makes it fair. Thank you again. And
24 when you go back home to work and to your families and your
25 children, your grandchildren, your neighbors, hopefully you

1 will be able to tell them that it was tough work, but it was
2 important work, and urge them to participate fully every time
3 that they are called for jury duty because if you don't
4 participate, then you're really opting out of the system.

5 Thank you very much. You are free to go. Counsel, I
6 also want to say while the jury is here before they exit
7 through that door this one last time, that it was a personal
8 pleasure for me as a judge of this court to have each and
9 every one of you before me and representing your clients
10 vigorously, aggressively, and professionally representing your
11 respective clients. I can say that as long as I've been doing
12 this as a judge, there is nothing more fulfilling and more
13 assuring than when lawyers do their jobs ethically and
14 professionally. That makes it a good experience for me.
15 Thank you very much. Thank you, ladies and gentlemen. You
16 are free to go.

17 **(The Following Proceedings Were Held Outside the Hearing and**
18 **Presence of the Jury.)**

19 THE COURT: All right. Defendants will be remanded
20 to the custody of the marshals pending sentencing. Counsel, I
21 will get a memo out to you within the next day or so letting
22 you know when the sentencing date will be. I will order a
23 presentence investigation report so that it can go with the
24 defendants upon their sentencing, all right? Thank you. We
25 will be in recess.

(PROCEEDINGS CONCLUDED AT 6:00 P.M.)

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CERTIFICATE

I, Angela K. Daley, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 127 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 30th day of May, 2012.

/S/Angela K. Daley
Angela K. Daley, CSR, RMR, FCRR, CRR
Official Court Reporter